

Amendment 64 Implementation Task Force Working Group Recommendation Template

1. **Working Group Name:** *Criminal Law/Terminology & Definitions*
2. **Individual Sponsor(s):** *Genifer Murray & Darrell S. Lingk*
3. **Describe the Recommendation:** *Clarification of definitions. “ENCLOSED, LOCKED SPACE”: ENCLOSED means: A permanent or semi-permanent area covered and surrounded on all sides. See C.R.S. 42-4-201. The temporary opening of windows or doors or the temporary removal of wall or ceiling panels, does not convert area into an unenclosed space.*

Some examples include, but are not limited to the following: a shed, a greenhouse, a trailer, a residence, a building, or a room inside a building. An indoor area can include any enclosed area or portion thereof.

LOCKED SPACE means: *That the area where cultivation occurs must be secured at the point of public entry by a device designed to limit access. If cultivation is being done inside a residence, if anyone under 21 lives at the residence, the room or space where cultivation is occurring must be locked when not occupied by an adult over the age of 21. Reasonable time shall be allowed for ingress and egress from the ENCLOSED, LOCKED SPACE*

“GROWING IS NOT CONDUCTED OPENLY OR PUBLICLY”:

OPENLY means: *not protected from unaided observations lawfully made from outside its perimeter not involving physical intrusion.*

PUBLICLY means: *area is open to general access without restriction.*
4. **To which provision of Amendment 64 does the recommendation apply? If there is no applicable provision within Amendment 64, please justify why this recommendation is necessary.** *Article 18, Section 16 3(b)*
5. **Which guiding principle does this recommendation support (underline all those that apply)?**
 - a. Promote the health, safety, and well-being of Colorado’s youth.
 - b. Be responsive to consumer needs and issues.
 - c. Propose efficient and effective regulation that is clear and reasonable, and not unduly burdensome.
 - d. Create sufficient and predictable funding mechanisms to support the regulatory and enforcement scheme.

- e. Create a balanced regulatory scheme that is complimentary, not duplicative, and clearly defined between state and local licensing authorities.
 - f. **Establish tools that are clear and practical, so that the interactions between law enforcement, consumers, and licensees are predictable and understandable.**
 - g. **Ensure that our streets, schools, and communities remain safe.**
 - h. Develop rules and guidance for certain relationships, such as employers and employees, landlords and tenants, students and professors that are clear and transparent.
6. **Please summarize the rationale for the recommendation – why is it important?**
It is important to have a clear definition in order to prevent confusion for law enforcement. It is also important to educate citizens who choose to cultivate to know where and have clear guidance where the legal boundaries are so they can comply and avoid prosecution.
7. **What issue or issues does your recommendation resolve?** *Confusion for law enforcement, attorneys, and citizens.*
8. **Is there a dissenting voice in your working group about this recommendation? If yes, please provide a summary of the minority opinion about this recommendation.**

(from Brian Connors and Lauren Davis)

Specifically, we do not support the proposed definition of “enclosed.” The approved recommendation defines “enclosed” as “A permanent or semi-permanent area covered and surrounded on all sides.” This recommendation defines terms affecting the location and circumstances of cultivation of marijuana under Article 18, Section 16 of the Colorado Constitution.

The majority view in the Working Group is that “enclosed” means an area or structure with a roof or top covering of some kind. In the context of cultivation, we would favor a definition which does not impose the requirement of a roof or top covering. This definition would allow cultivation inside a home with a locking door.

However, this definition would preclude cultivation in locations such as a locked, fenced backyard or patio or an apartment balcony or window box. A single plant in a rural fenced backyard would run afoul of this definition. Requiring cultivation in an enclosed area with a roof is an unreasonable burden on a citizen who wishes to cultivate up to six plants. Given the light required to grow marijuana or any other plant, a citizen would be forced to build or buy a shed or other structure and then would have to run electricity to the structure to facilitate cultivation.

There comes a point where unreasonable restrictions on the exercise of a constitutional right impermissibly burden the reasonable exercise of that right. This is such an instance. Many Coloradans have a fenced backyard or patio. This proposed definition would mean that any citizen who wishes to cultivate a single plant in a locked, fenced backyard would have to incur substantial expense to devise an electrified structure with a roof.

A more reasonable definition of “enclosed” would be one which allows for cultivation of up to six plants using natural light in a locked, fenced backyard. The act of fencing and locking the backyard is sufficient to address the limited and reasonable restriction on cultivation mandated in Article 18, Section 16 (3)(b).

(From Larry Abrahamson)

“Enclosed” shall be defined as: A structure with all sides and top subject to a secure lock designed to protect the contents from view by unaided observation and from unapproved entry by others.

My thought is that we are tasked with allowing for reasonable recreational use not providing a structure that goes beyond what is necessary for a person to enjoy a few joints of marijuana. There are many avenues available for a person to obtain marijuana, we don't have to provide the means for a structure that must facilitate a growth that will provide well beyond the need for recreational use.

Also I do not believe an enclosed structure made of glass is appropriate. There are many translucent green houses that serve the purpose of a healthy grow and do not subject the neighborhood to a visible marijuana project.

I am concerned that we are trying to provide a way to establish a green house structure or shed that can produce the equivalent of thousands of marijuana cigarettes. Is that our assigned goal under the Governor's directive and Amendment 64?

9. Which of the following does the recommendation impact (underline those that apply): ALL

- a. Statute (legislation)**
- b. Policy**
- c. Rules and Regulations**
- d. Other: Law enforcement**

10. Who owns implementation of the recommendation (underline those that apply):

- a. Governor
- b. State Legislature**
- c. Attorney General
- d. Department of Revenue
- e. Department of Public Safety
- f. Department of Public Health and Environment
- g. Local Government
- h. Other: *(please describe)*

11. Is the recommendation dependent on another decision or action: If yes – specifically what actions or decisions are required before this recommendation can be implemented? No

12. Will the recommendation have a cost to implement? If yes, what is the reason for the cost? If yes, give an estimate of the cost. No

13. Give an estimate of how long it would take to implement the recommendation. As long as it takes to write it up.

Amendment 64 Implementation Task Force Working Group Recommendation Template

1. **Working Group Name:** *Criminal Law/Terminology & Definitions*
2. **Individual Sponsor(s):** *Genifer Murray & Darrell S. Lingk*
3. **Describe the Recommendation:** *Clarification of definitions. “CONSUMPTION CONDUCTED OPENLY AND PUBLICLY”:*

CONSUMPTION means: *the act of smoking, inhaling, eating, drinking or otherwise causing marijuana, marijuana concentrate (18-18-406 has the reference to marijuana concentrate) or any product containing marijuana to enter a person’s body.*

PUBLICLY means: *on any public streets, sidewalks, parks or in other places generally open or accessible to members of the public without restriction.*

OPENLY means: *not protected from unaided observations lawfully made from outside its perimeter not involving physical intrusion.*

4. **To which provision of Amendment 64 does the recommendation apply? If there is no applicable provision within Amendment 64, please justify why this recommendation is necessary.**

Article 18, Section 16 3(d)

5. **Which guiding principle does this recommendation support (underline all those that apply)?**
 - a. **Promote the health, safety, and well-being of Colorado’s youth.**
 - b. Be responsive to consumer needs and issues.
 - c. **Propose efficient and effective regulation that is clear and reasonable, and not unduly burdensome.**
 - d. Create sufficient and predictable funding mechanisms to support the regulatory and enforcement scheme.
 - e. Create a balanced regulatory scheme that is complimentary, not duplicative, and clearly defined between state and local licensing authorities.
 - f. **Establish tools that are clear and practical, so that the interactions between law enforcement, consumers, and licensees are predictable and understandable.**
 - g. **Ensure that our streets, schools, and communities remain safe.**
 - h. Develop rules and guidance for certain relationships, such as employers and employees, landlords and tenants, students and professors that are clear and transparent.
6. **Please summarize the rationale for the recommendation – why is it important?**

It is important to have a clear definition in order to prevent confusion for law enforcement. It is also important to educate citizens who choose to consume marijuana to have clear guidance where the legal boundaries are so they can comply and avoid prosecution.

7. **What issue or issues does your recommendation resolve?** *Confusion for law enforcement, attorneys, and citizens.*
8. **Is there a dissenting voice in your working group about this recommendation? If yes, please provide a summary of the minority opinion about this recommendation.**
9. **Which of the following does the recommendation impact (underline those that apply):**
 - a. Statute (legislation)
 - b. Policy
 - c. Rules and Regulations
 - d. Other: Law enforcement
10. **Who owns implementation of the recommendation (underline those that apply):**
 - a. Governor
 - b. State Legislature
 - c. Attorney General
 - d. Department of Revenue
 - e. Department of Public Safety
 - f. Department of Public Health and Environment
 - g. Local Government
 - h. Other: *(please describe)*
11. **Is the recommendation dependent on another decision or action: If yes – specifically what actions or decisions are required before this recommendation can be implemented?** *No*
12. **Will the recommendation have a cost to implement? If yes, what is the reason for the cost? If yes, give an estimate of the cost.** *No*
13. **Give an estimate of how long it would take to implement the recommendation.** *As long as it takes to write it up.*

Amendment 64 Implementation Task Force Working Group Recommendation Template

Recommendation # RF-4

1. Working Group Name: Regulatory Framework

2. Individual Sponsor(s): Sam Kamin

3. Describe the Recommendation:

The Amendment 64 Task Force recommends that the General Assembly not enact a Colorado residency requirement for purchasing marijuana for personal use for individuals 21 years of age or older.

4. To which provision of Amendment 64 does the recommendation apply? If there is no applicable provision within Amendment 64, please justify why this recommendation is necessary.

(2)(b) “CONSUMER” MEANS A PERSON TWENTY-ONE YEARS OF AGE OR OLDER WHO PURCHASES MARIJUANA OR MARIJUANA PRODUCTS FOR PERSONAL USE BY PERSONS TWENTY-ONE YEARS OF AGE OR OLDER, BUT NOT FOR RESALE TO OTHERS.

(5)(c) IN ORDER TO ENSURE THAT INDIVIDUAL PRIVACY IS PROTECTED, NOTWITHSTANDING PARAGRAPH (a), THE DEPARTMENT SHALL NOT REQUIRE A CONSUMER TO PROVIDE A RETAIL MARIJUANA STORE WITH PERSONAL INFORMATION OTHER THAN GOVERNMENT-ISSUED IDENTIFICATION TO DETERMINE THE CONSUMER’S AGE, AND A RETAIL MARIJUANA STORE SHALL NOT BE REQUIRED TO ACQUIRE AND RECORD PERSONAL INFORMATION ABOUT CONSUMERS OTHER THAN INFORMATION TYPICALLY ACQUIRED IN A FINANCIAL TRANSACTION CONDUCTED AT A RETAIL LIQUOR STORE.

5. Which guiding principle does this recommendation support (underline all those that apply)?

- a. Promote the health, safety, and well-being of Colorado’s youth.
- b. Be responsive to consumer needs and issues.
- c. Propose efficient and effective regulation that is clear and reasonable, and not unduly burdensome.
- d. Create sufficient and predictable funding mechanisms to support the regulatory and enforcement scheme.
- e. Create a balanced regulatory scheme that is complimentary, not duplicative, and clearly defined between state and local licensing authorities.

- f. Establish tools that are clear and practical, so that the interactions between law enforcement, consumers, and licensees are predictable and understandable.
- g. Ensure that our streets, schools, and communities remain safe.
- h. Develop rules and guidance for certain relationships, such as employers and employees, landlords and tenants, students and professors that are clear and transparent.

6. Please summarize the rationale for the recommendation – why is it important?

The question whether a Colorado residency requirement ought to be imposed upon consumers of recreational marijuana fostered considerable discussion on the Regulatory Framework Working Group. In the end, the Working Group recommends that there should be no such requirement for two principal reasons.

First, the plain text of the Amendment suggests, though it does not require, such a reading. The text speaks of consumers solely as those over the age of 21 and envisions such customers presenting a “government-issued” identification. While not dispositive, these references appear to envision that *any* person over the age of 21 who can produce government-issued (not solely Colorado-issued) identification should be entitled to purchase marijuana for recreational use. The Blue Book explanation of Amendment 64 also repeatedly describes consumers simply as those over the age of 21. Thus, neither the text of the Amendment nor its official explanation envisions a residency requirement for consumers.

Second, imposing a residency requirement would necessarily create a black market for recreational marijuana within the state. It is clear that under current state law out-of-state residents may possess less than an ounce of marijuana without penalty. Forbidding those from out-of-state from purchasing the marijuana that they may lawfully possess in Colorado would thus encourage straw purchases and unauthorized resale to out-of-state residents.

The working group believes that these considerations were sufficient to outweigh the principal concern – namely that opening recreational sales to out-of-state residents could attract greater federal scrutiny and the displeasure of our neighboring states. The working group believed that these considerations could be addressed through labeling and education rather than residency requirements. Among the suggestions made for minimizing the risk of out-of-state purchasers taking marijuana home with them were: providing point-of-sale information to out-of-state consumers reminding them that marijuana cannot leave the state, signage at airports and near borders reminding visitors that marijuana purchased in Colorado must stay in Colorado, and coordination with neighboring states regarding drug interdiction. There was also discussion of imposing a restriction on retail licenses located near the state’s borders.

7. What issue or issues does your recommendation resolve? (Please identify the issues)

Whether visitors from other states (or those without Colorado-issued identification) would be permitted to purchase marijuana for recreational use.

8. Is there a dissenting voice in your working group about this recommendation? If yes, please provide a summary of the minority opinion about this recommendation.

The General Assembly should enact a ban on sales of recreational marijuana to persons other than Colorado residents. In the alternative, a limit on the amount of marijuana and marijuana infused products should be placed on non-Colorado residents.

There is nothing in the plain language of Amendment 64 that indicates “a person” as it is defined in the definition of consumer was meant to mean “all” persons whether they are from a foreign country or from another state. The Blue Book is equally silent. This creates an ambiguity that can be clarified by statute. Indeed, nothing in Amendment 64 restricts the General Assembly from enacting legislation defining “a person” within the definition of “consumer” to be limited to only a Colorado resident.

A residency restriction will have multiple benefits to the State and the recreational industry as a whole. First, Attorney General Holder has clearly indicated a primary concern of the Federal government is how the states that have legalized marijuana are going to keep it from being diverted to other states. In addition to the deterrent effect on out-of-state purchasers to attempt to buy marijuana or find it on the black market, the simple difficulty a ban creates for non-Coloradans will decrease the likelihood out of staters will leave the state with Colorado marijuana. If the federal government determines we are not doing enough to contain recreational marijuana within the state, it increases the likelihood the federal government will take action and potentially shut down the entire industry. Moreover, the medical marijuana industry has prospered on an entirely Colorado consumer base (a clear mandate in Amendment 20) and it is widely expected the recreational market will be many times larger. Restricting sales to Coloradans only would not unduly restrict the market but it would be an important step to signal the State’s intent about how serious trafficking out of state will be viewed.

Since the retail sale value of an ounce of marijuana in Colorado has dropped, and prices in other states have remained high, there is an incentive to take advantage of the (safe) legal market in Colorado. South Dakota for example has marijuana prices almost double Colorado’s according to certain websites. Most of the East coast prices are \$50-100 dollars more per ounce. Even assuming a \$50 market-up, one pound of trafficked Colorado marijuana would yield \$800 in profit – more than enough to make just one pound worth the price of gas, transit, etc. This easily creates the incentive to traffic Colorado legal marijuana to other states, sell it there for the higher local price and market it as safe, tested and with known high content levels of active THC. Further, since there are no controls on how many stores a person can visit in a day to purchase multiple ounces, pounds of marijuana can be gathered rather easily. There are more than 200

medical marijuana dispensaries in Denver alone (more than liquor stores); it is logical to assume that number would increase if recreational stores are allowed.

Surrounding states have expressed their dismay at Colorado's action to approve Amendment 64. Such a residency requirement could go a long way to signal Colorado's intent to keep our legal marijuana in-state. Further, it may help bridge inter-state trafficking interdiction efforts at the borders.

A statute enacted that restricts "consumer" to Colorado residents would be difficult – if not impossible – to challenge pursuant to the Commerce Clause because the recreational marijuana market involves a substance that is illegal under Federal law. That is, no person from another state is entitled from a Federal perspective to enjoy the benefits of Amendment 64.

Imposing a Colorado residency requirement helps prevent Colorado from the adverse effects of becoming a "pot tourism" destination.

In the alternative, even a limit on sale amounts to out-of-state persons would create disincentives to trafficking legal marijuana out of Colorado. For example, without a limit restriction, an out-of-state trafficker would have to visit only 18 shops in a day to get a thousand dollars profit if the marijuana was sold in any of Colorado's surrounding states for the minimum mark-up. But if a limit of, for example, an 1/8 of an ounce was placed on sales to non-Coloradans the same trafficker would have to visit more than 100 stores to compile a pound of marijuana. An 1/8 of marijuana can produce between 5 and 10 "joints." This dramatically shifts the incentive away from visiting Colorado to purchase marijuana and attempt to profit by selling in another state.

9. Which of the following does the recommendation impact (underline those that apply):

- a. Statute (legislation)
- b. Policy
- c. Rules and Regulations
- d. Other: *(please describe)*

10. Who owns implementation of the recommendation (underline those that apply):

- a. Governor
- b. State Legislature
- c. Attorney General
- d. Department of Revenue
- e. Department of Public Safety
- f. Department of Public Health and Environment
- g. Local Government
- h. Other: *(please describe)*

11. Is the recommendation dependent on another decision or action: If yes – specifically what actions or decisions are required before this recommendation can be implemented?

No.

12. Will the recommendation have a cost to implement? If yes, what is the reason for the cost? If yes, give an estimate of the cost.

The recommendations regarding education and diversion mitigation would likely entail some cost, which would likely vary with the robustness of those measures.

13. Give an estimate of how long it would take to implement the recommendation.

It should be a part of the legislation enacted by the General Assembly this term.

**Amendment 64 Implementation Task Force
Working Group Recommendation Template**

Recommendation # RF-4B

- 1. Working Group Name:** Regulatory Framework
- 2. Individual Sponsor(s):** Sam Kamin (Assigned to S Kamin and D Blake)
- 3. Describe the Recommendation:**

The Amendment 64 Task Force recommends that the General Assembly not enact a Colorado residency requirement for purchasing marijuana for personal use for individuals 21 years of age or older.

However, the General Assembly should impose reasonable limits on the amount of marijuana and marijuana-infused products that can be sold, in a single transaction, to an individual who does not present a government-issued ID that demonstrates Colorado residency.

- 4. To which provision of Amendment 64 does the recommendation apply? If there is no applicable provision within Amendment 64, please justify why this recommendation is necessary.**

(2)(b) “CONSUMER” MEANS A PERSON TWENTY-ONE YEARS OF AGE OR OLDER WHO PURCHASES MARIJUANA OR MARIJUANA PRODUCTS FOR PERSONAL USE BY PERSONS TWENTY-ONE YEARS OF AGE OR OLDER, BUT NOT FOR RESALE TO OTHERS.

(5)(c) IN ORDER TO ENSURE THAT INDIVIDUAL PRIVACY IS PROTECTED, NOTWITHSTANDING PARAGRAPH (a), THE DEPARTMENT SHALL NOT REQUIRE A CONSUMER TO PROVIDE A RETAIL MARIJUANA STORE WITH PERSONAL INFORMATION OTHER THAN GOVERNMENT-ISSUED IDENTIFICATION TO DETERMINE THE CONSUMER’S AGE, AND A RETAIL MARIJUANA STORE SHALL NOT BE REQUIRED TO ACQUIRE AND RECORD PERSONAL INFORMATION ABOUT CONSUMERS OTHER THAN INFORMATION TYPICALLY ACQUIRED IN A FINANCIAL TRANSACTION CONDUCTED AT A RETAIL LIQUOR STORE.

- 5. Which guiding principle does this recommendation support (underline all those that apply)?**
 - a. Promote the health, safety, and well-being of Colorado’s youth.
 - b. Be responsive to consumer needs and issues.
 - c. Propose efficient and effective regulation that is clear and reasonable, and not unduly burdensome.

- d. Create sufficient and predictable funding mechanisms to support the regulatory and enforcement scheme.
- e. Create a balanced regulatory scheme that is complimentary, not duplicative, and clearly defined between state and local licensing authorities.
- f. Establish tools that are clear and practical, so that the interactions between law enforcement, consumers, and licensees are predictable and understandable.
- g. Ensure that our streets, schools, and communities remain safe.
- h. Develop rules and guidance for certain relationships, such as employers and employees, landlords and tenants, students and professors that are clear and transparent.

6. Please summarize the rationale for the recommendation – why is it important?

The question whether a Colorado residency requirement ought to be imposed upon consumers of recreational marijuana fostered considerable discussion on the Regulatory Framework Working Group. In the end, the Working Group recommends that purchases by out-of state residents should not be prohibited for two principal reasons.

First, the plain text of the Amendment suggests, though it does not require, such a reading. The text speaks of consumers solely as those over the age of 21 and envisions such customers presenting a “government-issued” identification. While not dispositive, these references appear to envision that any person over the age of 21 who can produce government-issued (not solely Colorado-issued) identification should be entitled to purchase marijuana for recreational use. The Blue Book explanation of Amendment 64 also repeatedly describes consumers simply as those over the age of 21. Thus, neither the text of the Amendment nor its official explanation envisions a residency requirement for consumers.

Second, imposing a residency requirement would necessarily create a black market for recreational marijuana within the state. It is clear that under current state law out-of-state residents may possess less than an ounce of marijuana without violating Colorado law. Forbidding those from out-of-state from purchasing the marijuana that they may lawfully possess in Colorado would thus encourage straw purchases and unauthorized resale to out-of-state residents.

The working group believes that these considerations are sufficient to outweigh the principal concern – namely that opening recreational sales to out-of-state residents could attract greater federal scrutiny and the displeasure of our neighboring states. However, in order to allay these concerns, the working group believes that a limit should be placed on the amount of marijuana or marijuana-infused products that can be purchased by out-of-state consumers. Such a limit would create sufficient disincentives to diverting legal marijuana out of Colorado. For example, without a limit restriction, an out-of-state trafficker would have to visit only 18 shops in a day to get a thousand dollars profit if the marijuana was sold in any of Colorado’s surrounding states for the minimum mark-up. But if a limit of, for example, an eighth of an ounce was placed on sales to non-Coloradans the same trafficker would have to visit more than 100 stores to compile a pound of marijuana. An eighth of marijuana can produce between 5 and 10 “joints.” This dramatically

shifts the incentive away from visiting Colorado to purchase marijuana for resale in another state. Furthermore, such limits will demonstrate to the Federal government the sincerity of Colorado's efforts to limit the externalities of our decision to tax and regulate marijuana.

The working group believes that further actions should be taken to reduce the possibility that out-of-state consumers will take marijuana beyond our borders. Among the suggestions made for minimizing these risks were: providing point-of-sale information to out-of-state consumers reminding them that marijuana cannot leave the state, signage at airports and near borders reminding visitors that marijuana purchased in Colorado must stay in Colorado, and coordination with neighboring states regarding drug interdiction. There was also discussion of imposing a restriction on retail licenses located near the state's borders.

7. What issue or issues does your recommendation resolve? (Please identify the issues)

Whether visitors from other states (or those without Colorado-issued identification) would be permitted to purchase marijuana for recreational use.

8. Is there a dissenting voice in your working group about this recommendation? If yes, please provide a summary of the minority opinion about this recommendation.

The General Assembly should enact a ban on sales of recreational marijuana to persons other than Colorado residents. In the alternative, a limit on the amount of marijuana and marijuana infused products should be placed on non-Colorado residents.

There is nothing in the plain language of Amendment 64 that indicates "a person" as it is defined in the definition of consumer was meant to mean "all" persons whether they are from a foreign country or from another state. The Blue Book is equally silent. This creates an ambiguity that can be clarified by statute. Indeed, nothing in Amendment 64 restricts the General Assembly from enacting legislation defining "a person" within the definition of "consumer" to be limited to only a Colorado resident.

A residency restriction will have multiple benefits to the State and the recreational industry as a whole. First, Attorney General Holder has clearly indicated a primary concern of the Federal government is how the states that have legalized marijuana are going to keep it from being diverted to other states. In addition to the deterrent effect on out-of-state purchasers to attempt to buy marijuana or find it on the black market, the simple difficulty a ban creates for non-Coloradans will decrease the likelihood out of staters will leave the state with Colorado marijuana. If the federal government determines we are not doing enough to contain recreational marijuana within the state, it increases the likelihood the federal government will take action and potentially shut down the entire industry. Moreover, the medical marijuana industry has prospered on an entirely Colorado consumer base (a clear mandate in Amendment 20) and it is widely expected the recreational market will be many times larger. Restricting sales to Coloradans only would not unduly restrict the market but it would be an important step to signal the State's intent about how serious trafficking out of state will be viewed.

Since the retail sale value of an ounce of marijuana in Colorado has dropped, and prices in other states have remained high, there is an incentive to take advantage of the (safe) legal market in Colorado. South Dakota for example has marijuana prices almost double Colorado's according to certain websites. Most of the East coast prices are \$50-100 dollars more per ounce. Even assuming a \$50 market-up, one pound of trafficked Colorado marijuana would yield \$800 in profit – more than enough to make just one pound worth the price of gas, transit, etc. This easily creates the incentive to traffic Colorado legal marijuana to other states, sell it there for the higher local price and market it as safe, tested and with known high content levels of active THC. Further, since there are no controls on how many stores a person can visit in a day to purchase multiple ounces, pounds of marijuana can be gathered rather easily. There are more than 200 medical marijuana dispensaries in Denver alone (more than liquor stores); it is logical to assume that number would increase if recreational stores are allowed.

Surrounding states have expressed their dismay at Colorado's action to approve Amendment 64. Such a residency requirement could go a long way to signal Colorado's intent to keep our legal marijuana in-state. Further, it may help bridge inter-state trafficking interdiction efforts at the borders.

A statute enacted that restricts "consumer" to Colorado residents would be difficult – if not impossible – to challenge pursuant to the Commerce Clause because the recreational marijuana market involves a substance that is illegal under Federal law. That is, no person from another state is entitled from a Federal perspective to enjoy the benefits of Amendment 64.

Imposing a Colorado residency requirement helps prevent Colorado from the adverse effects of becoming a "pot tourism" destination.

Which of the following does the recommendation impact (underline those that apply):

- a. Statute (legislation)
- b. Policy
- c. Rules and Regulations
- d. Other: (please describe)

9. Who owns implementation of the recommendation (underline those that apply):

- a. Governor
- b. State Legislature
- c. Attorney General
- d. Department of Revenue
- e. Department of Public Safety
- f. Department of Public Health and Environment
- g. Local Government
- h. Other: (please describe)

10. Is the recommendation dependent on another decision or action: If yes – specifically what actions or decisions are required before this recommendation can be implemented?

No.

**11. Will the recommendation have a cost to implement? If yes, what is the reason for the cost?
If yes, give an estimate of the cost.**

The recommendations regarding education and diversion mitigation would likely entail some cost, which would likely vary with the robustness of those measures.

12. Give an estimate of how long it would take to implement the recommendation.

It should be a part of the legislation enacted by the General Assembly this term.

**Amendment 64 Implementation Task Force
Working Group Recommendation Template**

Recommendation # RF-5

1. Working Group Name: Regulatory Framework

2. Individual Sponsor(s): Unanimous

3. Describe the Recommendation:

The Amendment 64 Task Force recommends that the General Assembly adopt Colorado residency requirements as contained in the Medical Marijuana Code for recreational marijuana licensees. Specifically, an owner of a licensed marijuana establishment shall have been a resident of Colorado for at least two years prior to the date of the owner's application (Section 12-43.3-710 (1) (m), C.R.S.). All officers, managers, and employees of a licensed marijuana establishment shall be residents of Colorado upon the date of their license application (Section 12-43.3-310 (6), C.R.S.).

4. To which provision of Amendment 64 does the recommendation apply? If there is no applicable provision within Amendment 64, please justify why this recommendation is necessary.

Article XVIII, Section 16, (5)(a)(I) of the Colorado Constitution states:

(a) NOT LATER THAN JULY 1, 2013, THE DEPARTMENT SHALL ADOPT REGULATIONS NECESSARY FOR IMPLEMENTATION OF THIS SECTION. SUCH REGULATIONS SHALL NOT PROHIBIT THE OPERATION OF MARIJUANA ESTABLISHMENTS, EITHER EXPRESSLY OR THROUGH REGULATIONS THAT MAKE THEIR OPERATION UNREASONABLY IMPRACTICABLE. SUCH REGULATIONS SHALL INCLUDE: (I) PROCEDURES FOR THE ISSUANCE, RENEWAL, SUSPENSION, AND REVOCATION OF A LICENSE TO OPERATE A MARIJUANA ESTABLISHMENT, WITH SUCH PROCEDURES SUBJECT TO ALL REQUIREMENTS OF ARTICLE 4 OF TITLE 24 OF THE COLORADO ADMINISTRATIVE PROCEDURE ACT OR ANY SUCCESSOR PROVISION;

5. Which guiding principle does this recommendation support (underline all those that apply)?

- a. Promote the health, safety, and well-being of Colorado's youth.
- b. Be responsive to consumer needs and issues.
- c. Propose efficient and effective regulation that is clear and reasonable, and not unduly burdensome.
- d. Create sufficient and predictable funding mechanisms to support the regulatory and enforcement scheme.

- e. Create a balanced regulatory scheme that is complimentary, not duplicative, and clearly defined between state and local licensing authorities.
- f. Establish tools that are clear and practical, so that the interactions between law enforcement, consumers, and licensees are predictable and understandable.
- g. Ensure that our streets, schools, and communities remain safe.
- h. Develop rules and guidance for certain relationships, such as employers and employees, landlords and tenants, students and professors that are clear and transparent.

6. Please summarize the rationale for the recommendation – why is it important?

The proposed residency requirement will ensure that the Amendment 64 regulatory framework is better positioned to withstand federal scrutiny, given the parameters of the 10 Amendment to the U.S. Constitution and the natural limitations of interstate commerce. In terms of determining residency, it is proposed that the residency requirements found in current Colorado medical marijuana regulations be adopted, to wit: The location of a natural person's principal or primary home or place of abode ("primary home") may establish Colorado residency. A natural person's primary home is that home or place in which a person's habitation is fixed and to which the person, whenever absent, has the present intention of returning after a departure or absence there from, regardless of the duration of such absence. A primary home is a permanent building or part of a building and may include by way of example a house, condominium, apartment, room in a house, or mobile home. No rental property, vacant lot, vacant house or cabin, or other premises used solely for business purposes shall be considered a primary home. The State Licensing Authority considers the following types of evidence to be generally reliable indicators that a person's primary home is in Colorado: 1. Evidence of business pursuits, place of employment, income sources, residence for income or other tax purposes, age, residence of parents, spouse, and children, if any, leaseholds, situs of personal and real property, existence of any other residences outside of Colorado and the amount of time spent at each such residence, and any motor vehicle or vessel registration, 2. Duly authenticated copies of the following documents may be taken into account: A current driver's license with address, recent property tax receipts, copies of recent income tax returns, current voter registration cards, current motor vehicle or vessel registrations, and other public records evidencing place of abode or employment, 3. Other types of reliable evidence, 4. The State Licensing Authority will review the totality of the evidence, and any single piece of evidence regarding the location of a person's primary home will not necessarily be determinative.

7. What issue or issues does your recommendation resolve? (Please identify the issues)

This recommendation addresses in whole or in part, the following issues assigned to the Regulatory Framework working group:

Issue 1: Identify a regulatory framework (broad interpretation).

Issue 2: Identify the extent of the DOR's enforcement and regulatory powers

Issue 22: Can the state harmonize medical marijuana and A64 policies and rules? This would be a single regulatory framework.

8. Is there a dissenting voice in your working group about this recommendation? If yes, please provide a summary of the minority opinion about this recommendation.

This recommendation was unanimously approved by the working group.

9. Which of the following does the recommendation impact (underline those that apply):

- a. Statute (legislation)
- b. Policy
- c. Rules and Regulations
- d. Other: *(please describe)*

10. Who owns implementation of the recommendation (underline those that apply):

- a. Governor
- b. State Legislature
- c. Attorney General
- d. Department of Revenue
- e. Department of Public Safety
- f. Department of Public Health and Environment
- g. Local Government
- h. Other: *(please describe)*

11. Is the recommendation dependent on another decision or action: If yes – specifically what actions or decisions are required before this recommendation can be implemented?

No.

**12. Will the recommendation have a cost to implement? If yes, what is the reason for the cost?
If yes, give an estimate of the cost.**

Yes, establishing a regulatory framework, regardless of the approach, will require establishing oversight at both the state and the local level to verify Colorado residency; nonetheless, this cost should be minimized as the Department has established guidelines and procedures for this verification of residency.

13. Give an estimate of how long it would take to implement the recommendation.

Amendment 64 requires the Department of Revenue to adopt regulations by July 1, 2013. The Department shall begin accepting and processing license applications for recreational marijuana on October 1, 2013. Local governments must adopt ordinances or regulations specifying the entity within the locality that is responsible for processing applications submitted for a license not later than October 1, 2013. The Department shall issue an annual license within 45 to 90 days of receiving the license application.

Amendment 64 Implementation Task Force Working Group Recommendation Template

Recommendation # RF-6

1. Working Group Name: Regulatory Framework

2. Individual Sponsor(s):

3. Describe the Recommendation:

The Amendment 64 Task Force recommends that the general assembly adopt the current 70/30 vertical integration model contained within the Medical Marijuana Code for adult-use marijuana and enact the following additional requirements:

- Add a requirement that all licensees file a monthly report with the State licensing authority which documents all sales/transfers of marijuana during the month outside of the licensee's common ownership structure pursuant to the 30% allowance. This monthly report shall detail all such transactions including the amount of product transferred, the licensee the product was transferred to and the calculation of the percentage of on-hand inventory transferred outside of the common ownership structure expressed as a percentage of the total on-hand inventory for the month.
- Provide the ability for the state licensing authority to issue conditional licenses for a series of license applications submitted under a vertically integrated common ownership structure and to restrict the operation of any license contingent on local approval or other conditions that may be required.
- Add statewide restrictions on the number of licenses a vertically integrated common ownership structure can hold statewide. This statutory limitation can be further restricted by local governments under their constitutional authority to restrict time, place, manner and number.
- Add statewide restrictions on the size of marijuana cultivation facilities. This restriction could be based on square footage of the facility, the number of plants cultivated, energy use or any combination thereof. This statutory limitation can be further restricted by local governments under their constitutional authority to restrict time, place, manner and number.
- Provide for a grace period of one to two years that would limit new applications for recreational marijuana licenses to medical marijuana license holders in good standing, or applicants that had an application pending with the Medical Marijuana Enforcement Division prior to December 10, 2012.

This proposed framework would be subject to a two (2) year sunset review, at which time the General Assembly shall consider de-coupling the manufacturing and retail licenses and propose an "open integration" model.

4. To which provision of Amendment 64 does the recommendation apply? If there is no applicable provision within Amendment 64, please justify why this recommendation is necessary.

Article XVIII, Section 16, (1)(a) of the Colorado Constitution states:

“In the interest of the health and public safety of our citizenry, the people of the State of Colorado further find and declare that marijuana should be regulated in a manner *similar* (emphasis added) to alcohol...”

5. Which guiding principle does this recommendation support (underline all those that apply)?

- a. Promote the health, safety, and well-being of Colorado’s youth.
- b. Be responsive to consumer needs and issues.
- c. **Propose efficient and effective regulation that is clear and reasonable, and not unduly burdensome.**
- d. Create sufficient and predictable funding mechanisms to support the regulatory and enforcement scheme.
- e. Create a balanced regulatory scheme that is complimentary, not duplicative, and clearly defined between state and local licensing authorities.
- f. Establish tools that are clear and practical, so that the interactions between law enforcement, consumers, and licensees are predictable and understandable.
- g. Ensure that our streets, schools, and communities remain safe.
- h. Develop rules and guidance for certain relationships, such as employers and employees, landlords and tenants, students and professors that are clear and transparent.

6. Please summarize the rationale for the recommendation – why is it important?

The regulatory model for medical marijuana requires medical marijuana businesses produce a large portion of what they sell pursuant to Sections 12-43.3-402, 403 and 404, C.R.S., respectively. A licensed medical marijuana center is required to cultivate at least 70 percent of its own medical marijuana so it is required to have at least one optional premise cultivation. Medical marijuana infused product manufacturers may own optional premise cultivation licenses, but are limited by plant count. This concept or model is often referred to in its entirety as partial vertical integration.

The current vertical integration model in effect for medical marijuana regulation can be improved upon to further reduce the risk of diversion. The current model is vertically integrated for purposes of ownership structure. However, it is a partially open model for distribution. Currently, up to 30 percent of on-hand inventory may be sold and transferred to another licensee without notification to the state licensing authority. This presents an unnecessary risk of diversion that can be addressed by the requirements proposed in conjunction with the implementation of centralized inventory control system.

The state licensing authority is constrained by the requirements of Amendment 64 to issue a license within 90 days of the receipt of an application or defer to the local government for licensing. One of the challenges of vertical integration is the fact that numerous license applications can be received at one time for a vertically integrated common ownership business structure. All of these applications are subject to action on the part of the statewide authority within 90 days. If a suitability issue arises within the ownership structure, the amendment provides very little time for the applicant business to remedy the suitability issue or face the

possibility of the state licensing authority denying all of the licenses. Further, if a vertically integrated common ownership business structure submits applications for multiple licenses in multiple local jurisdictions, the state licensing authority can be faced with the dilemma of approving all licenses, even though some of the applications have not received local approval. This could be even further complicated if the statewide authority is ready to grant licenses that include a cultivation and retail store, and the retail store has not been granted local approval, but the cultivation has received local approval. Such real life scenarios may occur, and therefore, the state licensing authority must have the flexibility to issue licenses that may require that multiple conditions be met before the licensees can begin operations. The conditions could include local licensing authority approval or restricting a cultivation license's ability to operate until approval of a retail store has been obtained.

A vertical integration model, without some limitations, could lead to undue influence and control of the retail market over the long term by a limited number of licensees. This could result in unfair business and trade practices including price fixing. Restricting the number of licenses permitted under the vertical integration model by any single common ownership business structure will limit the risks of market domination by a few players. Further, limiting the number of licenses will also serve to control production and supply that may lead to diversion.

Restricting or limiting the size of cultivation facilities will reduce the risk of excess production that could increase the risk of diversion outside of the regulated model. Colorado is in a unique situation in that we have legalized the production of a product that is currently in conflict with Federal law, and the laws of surrounding states. Placing limits on the amount of marijuana produced by controlling the size of cultivation facilities reduces the risk of overproduction and the incentive of diverting this excess product outside of the regulated model and into neighboring states.

Amendment 64 gives existing medical marijuana licensees the "first bite of the apple" for recreational marijuana by permitting existing Medical Marijuana licensees to apply for a recreational marijuana license at a reduced fee of \$500. Further, in a competitive application process, under the provisions of Amendment 64, special consideration must be given to licensees with prior experience under the medical marijuana code and their relative compliance history. Restricting license applications to existing medical marijuana licensees, and those with pending applications with the state licensing authority, for a specified period of time ensures the transition to and expansion of recreational marijuana will be controlled. It provides the state licensing authority with the ability to transition into this regulatory model in a predictable and controlled manner. It also capitalizes on the experience and skills of existing licensees who have operated in a similar regulatory model for a number of years. Controlling this expansion over time and with proven operators will result in greater compliance with the regulatory system and less risk of negative outcomes.

7. What issue or issues does your recommendation resolve? (Please identify the issues)

This recommendation addresses in whole or in part, the following issues assigned to the Regulatory Framework working group:

Issue 1: Identify a regulatory framework (broad interpretation).

Issue 10: Identify framework for all types of consumption.

Issue 21: Who will regulate growers?

Issue 22: Can the state harmonize medical marijuana and A64 policies and rules? This would be a single regulatory framework.

8. Is there a dissenting voice in your working group about this recommendation? If yes, please provide a summary of the minority opinion about this recommendation.

The regulatory model for medical marijuana requires optional premise cultivations to be owned by medical marijuana centers and medical marijuana infused product manufacturers, pursuant to Sections 12-43.3-403, 402 and 404, C.R.S., respectively. A licensed medical marijuana center is required to cultivate at least 70 percent of its own medical marijuana so it is required to have at least one optional premise cultivation. Medical marijuana infused product manufacturers may own optional premise cultivation licenses, but are limited by plant count. This concept or model is often referred to in its entirety as vertical integration. There is no provision for an optional premise cultivation to be independently owned under the medical marijuana model. Conversely, the Colorado Liquor Code generally prohibits financial interests or vertical integration between a manufacturer, wholesaler or retail liquor licensee, with few exceptions.

Vertical integration as practiced in the medical marijuana regulatory model functions well due to the tie between the licensee and the medical marijuana patient. Under the medical marijuana regulatory model, optional premise cultivation licensees owned by medical marijuana centers may only grow and sell marijuana to patients registered with their operation. Further, these licensees may only cultivate six marijuana plants at one time for their registered patient. This model is commonly referred to as a “closed loop system.” Amendment 64 allows anyone that is 21 years or older to purchase marijuana or marijuana products from a licensed retail marijuana center. There are no restrictions in terms of cultivation in the recreational model as contemplated in Amendment 64.

Due to the fact that there are no registered patients in recreational marijuana, and no restrictions on cultivation, creating a closed loop system of control may best be achieved through strict inventory controls and requirements. Due to the requirements of the Medical Marijuana Code, businesses currently operating in this industry are vertically integrated under the same ownership between the cultivator and the centers that sell medical marijuana. Amendment 64 gives existing medical marijuana licensees the “first bite of the apple” for recreational marijuana by permitting existing Medical Marijuana licensees to apply for a recreational marijuana license at a reduced fee of \$500. Further, in a competitive application process, under the provisions of Amendment 64, special consideration must be given to licensees with prior experience under the medical marijuana code and their relative compliance history. However, if a strict liquor regulatory model were implemented, existing medical marijuana licensees would be unable to transition to recreational marijuana without divesting some of their established businesses to dissolve their vertical integration and meet the financial interest restrictions inherent in the liquor code. Conversely, new applicants that are only

interested in operating a recreational marijuana cultivation or retail business, exclusively, would be prohibited from doing so if the current vertical integration requirements contained in the Medical Marijuana Code were applied.

A blending of both the existing liquor code and the medical marijuana code into a hybrid regulatory model is highly desirable. Such a system will not require vertical integration nor prohibit it. This will give existing Medical Marijuana licensees the ability to transition to recreational marijuana without undue hardship on their existing business model, and at the same time, will permit new applicants to pursue the operation of a licensed cultivation or retail business or both. This concept is more in line with a free-market system for regulation.

Restrictions on the number of licenses a common ownership group can own and/or restrictions on the size of cultivations can further control production and supply under a hybrid regulatory model to minimize the risks of diversion. Ironically, the same restrictions would need to be applied to the existing vertical integration model currently practiced under the medical marijuana code because of the ability of licensees to transfer up to 30 percent of their products outside of the common ownership business structure. The term vertical integration as it applies to the current medical marijuana code only applies to the ownership structure. In reality, distribution under the current medical marijuana code is not vertically integrated, but rather, can best be described a hybrid distribution model that allows a significant portion of the production to be sold outside of the common ownership structure. The risk of diversion is just as real in this model as it is in a hybrid regulatory structure, absent strict inventory controls and other restrictions to control the level of production.

9. Which of the following does the recommendation impact (underline those that apply):

- a. Statute (legislation)
- b. Policy
- c. Rules and Regulations
- d. Other: *(please describe)*

10. Who owns implementation of the recommendation (underline those that apply):

- a. Governor
- b. State Legislature
- c. Attorney General
- d. Department of Revenue
- e. Department of Public Safety
- f. Department of Public Health and Environment
- g. Local Government
- h. Other: *(please describe)*

11. Is the recommendation dependent on another decision or action: If yes – specifically what actions or decisions are required before this recommendation can be implemented?

No.

**12. Will the recommendation have a cost to implement? If yes, what is the reason for the cost?
If yes, give an estimate of the cost.**

Yes, establishing a regulatory framework, regardless of the approach, will require establishing oversight at both the state and the local level. The cost to establish a state regulatory framework is being addressed by the Tax/Funding and Civil Issues working group. Establishing a regulatory framework for local government authority will be diverse and difficult to quantify.

13. Give an estimate of how long it would take to implement the recommendation.

Amendment 64 requires the Department of Revenue to adopt regulations by July 1, 2013. The Department shall begin accepting and processing license applications for recreational marijuana on October 1, 2013. Local governments must adopt ordinances or regulations specifying the entity within the locality that is responsible for processing applications submitted for a license not later than October 1, 2013. The Department shall issue an annual license within 45 to 90 days of receiving the license application.

**Amendment 64 Implementation Task Force
Working Group Recommendation Template**

Recommendation #RF-6b

1. Working Group Name: Regulatory Framework

2. Individual Sponsor(s):

3. Describe the Recommendation:

To facilitate the development of an adult-use marijuana industry that (1) contains a market of small to larger-sized cultivation, product manufacturing and retail facilities offering a wide variety of products and pricing for consumers, while (2) maximizing excise tax revenue to the State and (3) preventing systematic diversion of product, the Amendment 64 Task Force recommends that the General Assembly consider a regulatory model in which a person would be allowed to have cross-ownership across license types, but such ownership would be restricted to a limited number of licenses. Licensed premises would be limited in either size or production/sales capacity, and prohibited purchases sales outside the regulatory system would be punishable by licensure and/or criminal sanctions.

4. To which provision of Amendment 64 does the recommendation apply? If there is no applicable provision within Amendment 64, please justify why this recommendation is necessary.

Article XVIII, Section 16, (1)(a) of the Colorado Constitution states:

“In the interest of the health and public safety of our citizenry, the people of the State of Colorado further find and declare that marijuana should be regulated in a manner *similar* (emphasis added) to alcohol...”

5. Which guiding principle does this recommendation support (underline all those that apply)?

- a. Promote the health, safety, and well-being of Colorado’s youth.
- b. **Be responsive to consumer needs and issues.**
- c. **Propose efficient and effective regulation that is clear and reasonable, and not unduly burdensome.**
- d. Create sufficient and predictable funding mechanisms to support the regulatory and enforcement scheme.
- e. Create a balanced regulatory scheme that is complimentary, not duplicative, and clearly defined between state and local licensing authorities.

- f. Establish tools that are clear and practical, so that the interactions between law enforcement, consumers, and licensees are predictable and understandable.
- g. Ensure that our streets, schools, and communities remain safe.
- h. Develop rules and guidance for certain relationships, such as employers and employees, landlords and tenants, students and professors that are clear and transparent.

6. Please summarize the rationale for the recommendation – why is it important?

The Regulatory Framework Working Group looked at four different regulatory models to best achieve three goals: (1) foster the development of an industry consisting of varying sizes of cultivation, product manufacturing and retail facilities that would allow easy entry into the market and would produce the best product and pricing options for consumers (“diversified market”), (2) maximize excise tax revenues to the State (“maximize excise taxes”), and (3) prevent product diversion from the regulated market into the black market (“product diversion”).

Required Strict Vertical Integration

Under this regulatory model, retail facilities would be responsible for cultivating 100% percent of the product sold in their facilities.

(1) Diversified market: Without statutorily-imposed restrictions on the number and size of licenses, potential would exist for a concentrated number of large cultivation facilities that would control the number, size and location of retail facilities, and vice-versa, and provide competitive barriers for smaller players to enter the market. Consumers could only purchase marijuana cultivated by the retailer or products purchased from licensed product manufacturers, limiting product selection at a given retail store. Retail product pricing could be controlled by portions or the entire segment of the industry.

(2) Maximize excise taxes: Cultivation facilities would be wholesaling to retail facilities owned by the cultivation facilities themselves, meaning that wholesale prices could be artificially set at a low rate to avoid excise tax costs. This would possibly require the State to consider fixing wholesale prices to maximize excise tax revenues.

(3) Product Diversion: While a “closed loop” of seed-to-sale tracking would be maintained, cultivation facilities that produce too much product would have no means to dispose of excess inventory, creating the temptation to divert it to the black market. Conversely, retail facilities that do not have enough product would have no means to obtain additional inventory, creating the temptation to purchase it from the black market. Risk of diversion would be addressed by implementing a process by which the licensee would request a waiver from the Division identifying the specific products to be sold or purchased outside of their common ownership structure. It would also identify the licensee from whom or to whom the purchase or sale is made. This would allow the Division to maintain strict inventory control. Stringent licensure and/or criminal sanctions would be imposed for diversion.

Required Vertical Integration with Wholesale Option

Under this regulatory model, retail facilities would be responsible for cultivating a set percentage of the product sold in their facilities and could wholesale purchase the remaining percentage from other licensed cultivation facilities. This would be similar to the model currently used in Medical Marijuana.

(1) Diversified market: Without statutorily-imposed restrictions on the number and size of licenses, potential would exist for a concentrated number of large cultivation facilities that would control the number, size and location of retail facilities, and vice-versa, and provide competitive barriers for smaller players to enter the market. Most of the product selection available to consumers would be marijuana cultivated by the retailer or products purchased from licensed product manufacturers, with a smaller percentage coming from other cultivation facilities, providing more product selection than the required strict vertical integration model. Retail product pricing could be controlled by portions or the entire segment of the industry.

(2) Maximize excise taxes: Cultivation facilities would be wholesaling mostly to retail facilities owned by the cultivation facilities themselves, meaning these wholesale transactions could be artificially set at a low rate to avoid excise tax costs, while wholesale transactions to other licensed retail facilities would be set at either market or cost levels. This would possibly require the State to consider fixing wholesale prices or prohibit wholesale sales at below cost to maximize excise tax revenues.

(3) Product Diversion: A “closed loop” of seed-to-sale tracking would be maintained, and cultivation facilities that produce too much product would have means to dispose of excess inventory, reducing the temptation to divert it to the black market. However, this assumes that competitors would be receptive to purchasing the excess inventory. Conversely, retail facilities that do not have enough product would have means to obtain additional inventory, reducing the temptation to purchase it from the black market. However, this assumes that competitors would be receptive to wholesaling to the retailer. This model, which is currently in practice, does not require notification to the Division when up to 30 percent of the product is sold to or purchased from another licensee, thus preventing the Division from maintaining strict inventory control. Stringent licensure and/or criminal sanctions would be imposed for diversion.

Permissive Unrestricted Vertical Integration

Under this regulatory model, retail facilities would not necessarily need to cultivate the product they sell, but would be allowed to do so. Conversely, cultivation facilities would not be required to sell to a commonly-owned retail facility, but would be allowed to do so. This would allow independent cultivation facilities and independent retail stores. This model in Recommendation #RF-1 as the “hybrid” model.

(1) Diversified market: Without statutorily-imposed restrictions on the number and size of licenses, potential would still exist for a concentrated number of large cultivation facilities that would control

the number, size and location of retail facilities, and vice-versa, and provide competitive barriers for smaller players to enter the market. However, with the ability of cultivation facilities to wholesale to independent retail stores and of retail stores to purchase wholesale from independent cultivation facilities, the ability to control the wholesale market is greatly reduced. Product selection for consumers would be greatly increased with retail stores not being restricted to buying only from commonly-owned cultivating facilities or competitors at both the cultivation and retail level. It would be more difficult for retail product pricing to be controlled by portions or the entire segment of the industry.

(2) Maximize excise taxes: The wholesale market would be more market driven, but wholesale prices would still be driven by the level of wholesale activity between commonly-owned cultivation facilities and retail stores. This would possibly require the State to consider prohibiting wholesale sales at below cost to maximize excise tax revenues.

(3) Product Diversion: Cultivation facilities could sell their product to any licensed retail store, creating an open regulated market. These facilities would be required to track inventory from seed to wholesale transaction. Retail stores could purchase from any licensed cultivation facility or product manufacturer. These stores would be required to track inventory from wholesale purchase to retail sale. Stringent licensure and/or criminal sanctions would be imposed for selling to or purchasing from unauthorized sources.

Permissive Restricted Vertical Integration

This regulatory is similar to the previous one, however, restrictions would be placed on the number of licenses in which a person could have an ownership and on the size or production/sales capacity of licensed facilities.

Restricted ownership interests have produced the desired blend of smaller to large-size operators in other regulated industries in Colorado. The Colorado Limited Gaming Act provides that no person may have an ownership interest in more than three retail licenses. This restriction has resulted in a mix of 41 casinos ranging in size from 64 devices to over 1,500 devices. The Colorado Liquor Code allows a person to have an ownership interest in only one retail liquor store license. This restriction has resulted in a mix of 1,650 liquor stores throughout the state, ranging from small neighbor stores to the largest liquor store in the world located in Thornton.

Size or production capacity restrictions also apply in the gaming and liquor regulatory models. Gaming is restricted to no more than 35% of a casino building or 50% of any floor. Brew pubs are limited to producing 60,000 barrels of beer a year, while limited wineries can produce no more than 100,000 gallons. The public policy question exists as to whether the State wants acreage-sized outside cultivation fields or million square feet grow facilities or warehouse-sized retail stores.

(1) Diversified market: With statutorily-imposed restrictions on the number and size of licenses, persons would be restricted to how much of the market they could own and/or control, opening up market to more players. Product selection for consumers would be greatly increased with retail stores

not being restricted to buying only from commonly-owned cultivating facilities or competitors at both the cultivation and retail level. It would be even more difficult for retail product pricing to be controlled by portions or the entire segment of the industry.

(2) Maximize excise taxes: The wholesale market would be even more market driven with the level of wholesale activity between commonly-owned cultivation facilities as a portion of the wholesale market being potentially reduced. The State may still consider prohibiting wholesale sales at below cost to maximize excise tax revenues.

(3) Product Diversion: As with the previous model, cultivation facilities could sell their product to any licensed retail store, creating an open regulated market. These facilities would be required to track inventory from seed to wholesale transaction. Retail stores could purchase from any licensed cultivation facility or product manufacturer. These stores would be required to track inventory from wholesale purchase to retail sale. Stringent licensure and/or criminal sanctions would be imposed for selling to or purchasing from unauthorized sources.

The Regulatory Framework Working Group recommends the General Assembly consider this last model.

7. What issue or issues does your recommendation resolve? (Please identify the issues)

This recommendation addresses in whole or in part, the following issues assigned to the Regulatory Framework working group:

Issue 1: Identify a regulatory framework (broad interpretation).

Issue 10: Identify framework for all types of consumption.

Issue 21: Who will regulate growers?

Issue 22: Can the state harmonize medical marijuana and A64 policies and rules? This would be a single regulatory framework.

8. Is there a dissenting voice in your working group about this recommendation? If yes, please provide a summary of the minority opinion about this recommendation.

Create a system of regulation based on vertically integrated licensing that allows a company to control the entire manufacturing process, from raw goods to the end consumer. Current Colorado liquor code includes tight controls on the “craft” production and sale of beer and wine manufactured within the boundaries of the state.

The recommendation is to combine aspects of vertically integrated business models regulated by the Department of Revenue with the controls on ownership and seed-to-sale tracking requirements currently in place for medical marijuana businesses. This system shall be subject to sunset review two years after its implementation.

The licensing of legal marijuana businesses would require a business to obtain a manufacturing license much like that in liquor code under 12-47-402 C.R.S. Each manufacturer is allowed one retail location under the same license, with additional retail licenses available by paying additional fees.

Classifications of licenses: We further recommend that two classifications of licenses be made available regarding retail sales. Type I would require that the business manufacture 100% of what it sells through its retail location. These licenses would be less costly and would likely make sense in small communities outside metro areas. These licenses would be based on 12-47-403, C.R.S, a limited winery license.

Type II licensees would be required to manufacture a specified amount of what it retails, wholesale a limited amount to other retail establishments licensed under this section, and purchase for retail in its retail establishment a limited amount of product from other manufacturers licensed under this section. These licenses would be based off 12-47-415 C.R.S, Brew pub license.

The licensing of vertically integrated alcohol manufacture and sale lay out responsibilities for local and state control that are vastly different than those regulating medical marijuana. Given the difficulties experienced by local and state governments in the processing and enforcement of medical marijuana licenses, we would recommend adopting the structure laid out in the sections of law cited above.

It is important to note that this recommendation does not cover the regulation of marijuana infused products.

9. Which of the following does the recommendation impact (underline those that apply):

- a. Statute (legislation)
- b. Policy
- c. Rules and Regulations
- d. Other: *(please describe)*

10. Who owns implementation of the recommendation (underline those that apply):

- a. Governor
- b. State Legislature
- c. Attorney General
- d. Department of Revenue
- e. Department of Public Safety
- f. Department of Public Health and Environment
- g. Local Government
- h. Other: *(please describe)*

11. Is the recommendation dependent on another decision or action: If yes – specifically what actions or decisions are required before this recommendation can be implemented?

No.

**12. Will the recommendation have a cost to implement? If yes, what is the reason for the cost?
If yes, give an estimate of the cost.**

Yes, establishing a regulatory framework, regardless of the approach, will require establishing oversight at both the state and the local level. The cost to establish a state regulatory framework is being addressed by the Tax/Funding and Civil Issues working group. Establishing a regulatory framework for local government authority will be diverse and difficult to quantify.

This recommendation will have a high cost for implementation.

13. Give an estimate of how long it would take to implement the recommendation.

Amendment 64 requires the Department of Revenue to adopt regulations by July 1, 2013. The Department shall begin accepting and processing license applications for recreational marijuana on October 1, 2013. Local governments must adopt ordinances or regulations specifying the entity within the locality that is responsible for processing applications submitted for a license not later than October 1, 2013. The Department shall issue an annual license within 45 to 90 days of receiving the license application.

**Amendment 64 Implementation Task Force
Working Group Recommendation Template**

Recommendation # RF-7

1. Working Group Name: Regulatory Framework

2. Individual Sponsor(s): Sam Kamin

3. Describe the Recommendation:

The Amendment 64 Task Force recommends that the General Assembly not enact legislation to allow or require a state-run distribution model. Such legislation is not consistent with either the text or spirit of Amendment 64.

4. To which provision of Amendment 64 does the recommendation apply? If there is no applicable provision within Amendment 64, please justify why this recommendation is necessary.

5 (a) NOT LATER THAN JULY 1, 2013, THE DEPARTMENT SHALL ADOPT REGULATIONS NECESSARY FOR IMPLEMENTATION OF THIS SECTION. SUCH REGULATIONS SHALL NOT PROHIBIT THE OPERATION OF MARIJUANA ESTABLISHMENTS, EITHER EXPRESSLY OR THROUGH REGULATIONS THAT MAKE THEIR OPERATION UNREASONABLY IMPRACTICABLE. SUCH REGULATIONS SHALL INCLUDE:

(I) PROCEDURES FOR THE ISSUANCE, RENEWAL, SUSPENSION, AND REVOCATION OF A LICENSE TO OPERATE A MARIJUANA ESTABLISHMENT, WITH SUCH PROCEDURES SUBJECT TO ALL REQUIREMENTS OF ARTICLE 4 OF TITLE 24 OF THE COLORADO ADMINISTRATIVE PROCEDURE ACT OR ANY SUCCESSOR PROVISION;

(II) A SCHEDULE OF APPLICATION, LICENSING AND RENEWAL FEES, PROVIDED, APPLICATION FEES SHALL NOT EXCEED FIVE THOUSAND DOLLARS, WITH THIS UPPER LIMIT ADJUSTED ANNUALLY FOR INFLATION, UNLESS THE DEPARTMENT DETERMINES A GREATER FEE IS NECESSARY TO CARRY OUT ITS RESPONSIBILITIES UNDER THIS SECTION, AND PROVIDED FURTHER, AN ENTITY THAT IS LICENSED UNDER THE COLORADO MEDICAL MARIJUANA CODE TO CULTIVATE OR SELL MARIJUANA OR TO MANUFACTURE MARIJUANA PRODUCTS AT THE TIME THIS SECTION TAKES EFFECT AND THAT CHOOSES TO APPLY FOR A SEPARATE MARIJUANA ESTABLISHMENT LICENSE SHALL NOT BE REQUIRED TO PAY AN APPLICATION FEE GREATER THAN FIVE HUNDRED DOLLARS TO APPLY FOR A LICENSE TO OPERATE A MARIJUANA ESTABLISHMENT IN ACCORDANCE WITH THE PROVISIONS OF THIS SECTION;

5. Which guiding principle does this recommendation support (underline all those that apply)?

- a. Promote the health, safety, and well-being of Colorado's youth.
- b. Be responsive to consumer needs and issues.
- c. Propose efficient and effective regulation that is clear and reasonable, and not unduly burdensome.
- d. Create sufficient and predictable funding mechanisms to support the regulatory and enforcement scheme.
- e. Create a balanced regulatory scheme that is complimentary, not duplicative, and clearly defined between state and local licensing authorities.
- f. Establish tools that are clear and practical, so that the interactions between law enforcement, consumers, and licensees are predictable and understandable.
- g. Ensure that our streets, schools, and communities remain safe.
- h. Develop rules and guidance for certain relationships, such as employers and employees, landlords and tenants, students and professors that are clear and transparent.

6. Please summarize the rationale for the recommendation – why is it important?

Both the Regulatory Framework Working Group and the Amendment 64 Task Force have heard public comment in support of a state-run distribution model similar to the state-run liquor store model adopted in some jurisdictions. This testimony has been supported by academic studies showing that state-run liquor stores are associated with fewer negative externalities of alcohol consumption than are privately-run liquor stores. It has been argued to us that state-run marijuana retailers would be better at reducing the harmful effects of marijuana distribution – use by minors, diversion out of state, etc. – than a model based on privately run retail stores.

Regardless of the merits of this argument, however, the Regulatory Framework Working Group recommends that the state-run retail model not be adopted. Quite simply, a state-run retail model is not consistent with either the text or the spirit of Amendment 64. The Amendment clearly envisions private parties applying to the state for licenses and then being supervised and regulated by the state. In every part, the Amendment contemplates the state as a regulator of private commercial activity rather than as a market participant itself. Adopting a state-run system would thus be inconsistent with the Amendment's clear mandate and should not be adopted by the Task Force.

As an additional matter, we note that adopting a regulatory model which called for state-run retail stores would raise serious federalism concerns. Under such a model the state would be actively violating federal law rather than merely licensing others to do so. Such open defiance of the Controlled Substances Act might be seen by the federal government as an intolerable obstacle to the enforcement of federal law and could lead to a suit to enjoin such conduct. A state-run distribution system is thus far more antagonistic to the federal government than one in which the state merely licenses private conduct and should be rejected for that reason as well.

7. What issue or issues does your recommendation resolve? (Please identify the issues)

Whether the legislature should consider a state-run retail store model.

- 8. Is there a dissenting voice in your working group about this recommendation? If yes, please provide a summary of the minority opinion about this recommendation.**

This is a consensus recommendation of the working group.

- 9. Which of the following does the recommendation impact (underline those that apply):**

- a. Statute (legislation)
- b. Policy
- c. Rules and Regulations
- d. Other: *(please describe)*

- 10. Who owns implementation of the recommendation (underline those that apply):**

- a. Governor
- b. State Legislature
- c. Attorney General
- d. Department of Revenue
- e. Department of Public Safety
- f. Department of Public Health and Environment
- g. Local Government
- h. Other: *(please describe)*

- 11. Is the recommendation dependent on another decision or action: If yes – specifically what actions or decisions are required before this recommendation can be implemented?**

No.

- 12. Will the recommendation have a cost to implement? If yes, what is the reason for the cost? If yes, give an estimate of the cost.**

No. A state-run retail model would likely be more expensive than a state-licensed retail model.

- 13. Give an estimate of how long it would take to implement the recommendation.**

It should take none.

Amendment 64 Implementation Task Force Working Group Recommendation Template

Recommendation #RF-8

1. Working Group Name: Regulatory Framework

2. Individual Sponsor(s): Ron Kammerzell

3. Describe the Recommendation:

The Amendment 64 Task Force recommends that the General Assembly convert the Medical Marijuana Enforcement Division into the Marijuana Enforcement Division and enact legislation to provide this agency with statutory powers to regulate medical marijuana and recreational marijuana as the principal state licensing and regulatory authority.

4. To which provision of Amendment 64 does the recommendation apply? If there is no applicable provision within Amendment 64, please justify why this recommendation is necessary.

Article XVIII, Section 16, of the Constitution of the State of Colorado states:

(5) REGULATION OF MARIJUANA.

(a) NOT LATER THAN JULY 1, 2013, THE DEPARTMENT SHALL ADOPT REGULATIONS NECESSARY FOR IMPLEMENTATION OF THIS SECTION. SUCH REGULATIONS SHALL NOT PROHIBIT THE OPERATION OF MARIJUANA ESTABLISHMENTS, EITHER EXPRESSLY OR THROUGH REGULATIONS THAT MAKE THEIR OPERATION UNREASONABLY IMPRACTICABLE. SUCH REGULATIONS SHALL INCLUDE:

(I) PROCEDURES FOR THE ISSUANCE, RENEWAL, SUSPENSION, AND REVOCATION OF A LICENSE TO OPERATE A MARIJUANA ESTABLISHMENT, WITH SUCH PROCEDURES SUBJECT TO ALL REQUIREMENTS OF ARTICLE 4 OF TITLE 24 OF THE COLORADO ADMINISTRATIVE PROCEDURE ACT OR ANY SUCCESSOR PROVISION;

(II) A SCHEDULE OF APPLICATION, LICENSING AND RENEWAL FEES, PROVIDED, APPLICATION FEES SHALL NOT EXCEED FIVE THOUSAND DOLLARS, WITH THIS UPPER LIMIT ADJUSTED ANNUALLY FOR INFLATION, UNLESS THE DEPARTMENT DETERMINES A GREATER FEE IS NECESSARY TO CARRY OUT ITS RESPONSIBILITIES UNDER THIS SECTION, AND PROVIDED FURTHER, AN ENTITY THAT IS LICENSED UNDER THE COLORADO MEDICAL MARIJUANA CODE TO CULTIVATE OR SELL MARIJUANA OR TO MANUFACTURE MARIJUANA PRODUCTS AT THE TIME THIS SECTION TAKES EFFECT AND THAT CHOOSES TO APPLY FOR A SEPARATE MARIJUANA ESTABLISHMENT LICENSE SHALL NOT BE REQUIRED TO PAY AN APPLICATION FEE GREATER THAN FIVE HUNDRED DOLLARS TO APPLY FOR A LICENSE TO OPERATE A MARIJUANA ESTABLISHMENT IN ACCORDANCE WITH THE PROVISIONS OF THIS SECTION;

(III) QUALIFICATIONS FOR LICENSURE THAT ARE DIRECTLY AND DEMONSTRABLY RELATED TO THE OPERATION OF A MARIJUANA ESTABLISHMENT;

(IV) SECURITY REQUIREMENTS FOR MARIJUANA ESTABLISHMENTS;

(V) REQUIREMENTS TO PREVENT THE SALE OR DIVERSION OF MARIJUANA AND MARIJUANA

(VI) LABELING REQUIREMENTS FOR MARIJUANA AND MARIJUANA PRODUCTS SOLD OR DISTRIBUTED BY A MARIJUANA ESTABLISHMENT;

(VII) HEALTH AND SAFETY REGULATIONS AND STANDARDS FOR THE MANUFACTURE OF MARIJUANA PRODUCTS AND THE CULTIVATION OF MARIJUANA;

(VIII) RESTRICTIONS ON THE ADVERTISING AND DISPLAY OF MARIJUANA AND MARIJUANA PRODUCTS; AND

(IX) CIVIL PENALTIES FOR THE FAILURE TO COMPLY WITH REGULATIONS MADE PURSUANT TO THIS SECTION.

(b) IN ORDER TO ENSURE THE MOST SECURE, RELIABLE, AND ACCOUNTABLE SYSTEM FOR THE PRODUCTION AND DISTRIBUTION OF

5. Which guiding principle does this recommendation support (underline all those that apply)?

- a. Promote the health, safety, and well-being of Colorado's youth.
- b. Be responsive to consumer needs and issues.
- c. Propose efficient and effective regulation that is clear and reasonable, and not unduly burdensome.
- d. Create sufficient and predictable funding mechanisms to support the regulatory and enforcement scheme.
- e. Create a balanced regulatory scheme that is complimentary, not duplicative, and clearly defined between state and local licensing authorities.
- f. Establish tools that are clear and practical, so that the interactions between law enforcement, consumers, and licensees are predictable and understandable.
- g. Ensure that our streets, schools, and communities remain safe.
- h. Develop rules and guidance for certain relationships, such as employers and employees, landlords and tenants, students and professors that are clear and transparent.

6. Please summarize the rationale for the recommendation – why is it important?

Creating a new and separate agency within the Department of Revenue to regulate recreational marijuana would be duplicitous and inefficient. Expanding the role of the existing medical marijuana division to regulate both medical and recreational marijuana would take advantage of existing infrastructure and staff expertise developed over the past few years in regulating marijuana. The transition to regulating both recreational and medical marijuana would be shorter and smoother by building on the resources already in place, instead of starting from scratch.

The common businesses and business practices that currently exist in medical marijuana will exist in the recreational marijuana. Many of the same or similar regulatory standards that exist today in medical marijuana will also be present in the regulation of recreational marijuana. Further, combining resources into one agency will lead to greater synergies and coordination than operating two separate agencies. Creating one agency to regulate marijuana in Colorado will also lead to funding efficiencies and a greater ability to control and offset the costs of regulation. It is anticipated that the Task Force will consider a recommendation to fund one regulatory agency from general fund proceeds for a period of five years and that all cash funds collected from this agency for application and licensing fees will be deposited in the general fund.

In the interests of simplicity and efficiency, the general assembly should consider harmonizing existing medical marijuana statutes with new enabling legislation for the oversight of recreational marijuana in the State of Colorado into one section of organic statutes.

7. What issue or issues does your recommendation resolve? (Please identify the issues)

Regulatory Framework Issue #22: Can the state harmonize medical marijuana and Amendment 64 policy into a single framework.

8. Is there a dissenting voice in your working group about this recommendation? If yes, please provide a summary of the minority opinion about this recommendation.

This is a consensus recommendation of the working group.

9. Which of the following does the recommendation impact (underline those that apply):

- a. Statute (legislation)
- b. Policy
- c. Rules and Regulations
- d. Other: *(please describe)*

10. Who owns implementation of the recommendation (underline those that apply):

- a. Governor
- b. State Legislature
- c. Attorney General
- d. Department of Revenue
- e. Department of Public Safety
- f. Department of Public Health and Environment
- g. Local Government
- h. Other: *(please describe)*

11. Is the recommendation dependent on another decision or action: If yes – specifically what actions or decisions are required before this recommendation can be implemented?

No.

12. Will the recommendation have a cost to implement? If yes, what is the reason for the cost? If yes, give an estimate of the cost.

Yes, establishing a regulatory framework, regardless of the approach, will require establishing oversight at both the state and the local level. The cost to establish a state regulatory framework is being addressed by the Tax/Funding and Civil Issues working group. Establishing a regulatory framework for local government authority will be diverse and difficult to quantify.

13. Give an estimate of how long it would take to implement the recommendation.

Amendment 64 requires the Department of Revenue to adopt regulations by July 1, 2013. The Department shall begin accepting and processing license applications for recreational marijuana on October 1, 2013. Local governments must adopt ordinances or regulations specifying the entity within the locality that is responsible for processing applications submitted for a license not later than October 1, 2013. The Department shall issue an annual license within 45 to 90 days of receiving the license application.

**Amendment 64 Implementation Task Force
Working Group Recommendation Template**

Recommendation RF-9

1. Working Group Name: Regulatory Framework

2. Individual Sponsor(s): Ron Kammerzell

3. Describe the Recommendation:

The Amendment 64 Task Force recommends that the General Assembly enact legislation to define “licensed premises” and to establish regulations for the operation of a licensed retail marijuana store and a licensed medical marijuana center within one location. Such regulations may include appropriate restrictions such as separate and distinct ingress/egress, inventory control, point of sale and recordkeeping. This legislation must address the ability of a local government authority to prohibit multiple licensed premises involving a medical and adult-use marijuana license within one location based on their authority to regulate time, place, manner and number pursuant to the constitutional amendment. This recommendation is limited to licensed retail marijuana stores and medical marijuana centers.

4. To which provision of Amendment 64 does the recommendation apply? If there is no applicable provision within Amendment 64, please justify why this recommendation is necessary.

Article XVIII, Section 16, (1)(a) of the Colorado Constitution states:

(7) Medical marijuana provisions unaffected. NOTHING IN THIS SECTION SHALL BE CONSTRUED:

(d) TO PERMIT ANY MEDICAL MARIJUANA CENTER LICENSED PURSUANT TO SECTION 14 OF THIS ARTICLE AND THE COLORADO MEDICAL MARIJUANA CODE TO OPERATE ON THE SAME PREMISES AS A RETAIL MARIJUANA STORE; OR

5. Which guiding principle does this recommendation support (underline all those that apply)?

- a. Promote the health, safety, and well-being of Colorado’s youth.
- b. Be responsive to consumer needs and issues.
- c. Propose efficient and effective regulation that is clear and reasonable, and not unduly burdensome.
- d. Create sufficient and predictable funding mechanisms to support the regulatory and enforcement scheme.
- e. Create a balanced regulatory scheme that is complimentary, not duplicative, and clearly defined between state and local licensing authorities.
- f. Establish tools that are clear and practical, so that the interactions between law enforcement, consumers, and licensees are predictable and understandable.

- g. Ensure that our streets, schools, and communities remain safe.
- h. Develop rules and guidance for certain relationships, such as employers and employees, landlords and tenants, students and professors that are clear and transparent.

6. Please summarize the rationale for the recommendation – why is it important?

A smooth transition for licensed medical marijuana centers to a retail store model is dependent upon their ability to utilize existing structures that can be altered to operate two separate and distinct licensed premises for both retail and medical marijuana customers. From a business standpoint, this ability is critical to the early success of a retail marijuana model and to the preservation of the medical marijuana system. However, from a regulatory standpoint, accommodating business needs will create undue risks without proper standards and restrictions being enacted.

Some of the issues or risks that permitting multiple licensed premises to operate within one require further consideration include:

Different age restrictions – medical marijuana is permissible for consumption, for properly registered patients, by persons under the age of 21. Retail marijuana cannot be purchased by persons under the age of 21. Without structural separation of licensed premises, this increases the risk for underage consumption in the retail model and potential purchases of medical marijuana by persons who are not properly registered as patients.

Inventory Control – To effectively address potential diversion of marijuana, strict seed to sale tracking must be maintained separately and distinctly by each licensee, regardless of ownership structure and regardless of the configuration of licensed premises. Licensed premises located within a single building/structure inherently increases the risk of co-mingling of on-hand inventory between the licensed premises. Such activity degrades the effectiveness of the inventory control and increases the risk of diversion.

Point of Sale – Medical Marijuana and Retail Marijuana may be subject to different types of state taxes, and potentially local taxes. By maintaining two licensed premises with different taxing requirements within one building/structure, this increases the risk that point of sale transactions could be commingled or fraudulently processed for the purposes of tax avoidance.

The overarching strategy to effectively minimize risks associated with having multiple licensed premises in one building/structure is to ensure that they remain separate and distinct, both physically and functionally.

Because this concept ultimately affects land use at a local community level, it is essential that any legislation recognize the local government authority to regulate time, place, manner and number. Specifically, to provide the authority at the local level to prohibit multiple licensed premises in one building/structure if they so choose.

7. What issue or issues does your recommendation resolve? (Please identify the issues)

Issue 1: Identify a regulatory framework

Issue 9: Licensing model impacts and how it impacts local authority

8. Is there a dissenting voice in your working group about this recommendation? If yes, please provide a summary of the minority opinion about this recommendation.

This is a consensus recommendation of the working group.

9. Which of the following does the recommendation impact (underline those that apply):

- a. Statute (legislation)
- b. Policy
- c. Rules and Regulations
- d. Other: *(please describe)*

10. Who owns implementation of the recommendation (underline those that apply):

- a. Governor
- b. State Legislature
- c. Attorney General
- d. Department of Revenue
- e. Department of Public Safety
- f. Department of Public Health and Environment
- g. Local Government
- h. Other: *(please describe)*

11. Is the recommendation dependent on another decision or action: If yes – specifically what actions or decisions are required before this recommendation can be implemented?

No.

12. Will the recommendation have a cost to implement? If yes, what is the reason for the cost? If yes, give an estimate of the cost.

Yes, establishing a regulatory framework, and the regulatory requirements for this recommendation will require establishing oversight at both the state and the local level. The cost to establish a state regulatory framework is being addressed by the Tax/Funding and Civil Issues working group. Establishing a regulatory framework for local government authority will be diverse and difficult to quantify. Some local governments may restrict use more than others and this will have a direct effect on their costs of regulation.

This recommendation will have a low to moderate cost for both state and local governments.

13. Give an estimate of how long it would take to implement the recommendation.

Amendment 64 requires the Department of Revenue to adopt regulations by July 1, 2013. The Department shall begin accepting and processing license applications for recreational marijuana on October 1, 2013. Local governments must adopt ordinances or regulations specifying the entity within the locality that is responsible for processing applications submitted for a license not later than October 1, 2013. The Department shall issue an annual license within 45 to 90 days of receiving the license application. Regulatory requirements associated with this recommendation would need to be in place upon implementation.

**Amendment 64 Implementation Task Force
280e Revised Recommendation 1**

1. Working Group Name: Tax/Funding and Civil Law Issues WG

2. Individual Sponsor(s): Mike Elliott (13-1-1)

3. Describe the Recommendation

The Amendment 64 Task Force recommends that the Colorado General Assembly allow state legal cannabis businesses to claim state income tax deductions for expenditures that are eligible to be claimed as federal income tax deductions but are disallowed by section 280E.

4. To which provision of Amendment 64 does the recommendation apply? If there is no applicable provision within Amendment 64, please justify why this recommendation is necessary.

Amendment 64 is silent on 280(e). A recommendation is necessary to bring the current law in line with the new legal status of cannabis businesses.

5. Which guiding principle does this recommendation support (underline all those that apply)?

- a. Promote the health, safety, and well-being of Colorado's youth.
- b. Be responsive to consumer needs and issues.
- c. Propose efficient and effective regulation that is clear and reasonable, and not unduly burdensome.
- d. Create sufficient and predictable funding mechanisms to support the regulatory and enforcement scheme.
- e. Create a balanced regulatory scheme that is complimentary, not duplicative, and clearly defined between state and local licensing authorities.
- f. Establish tools that are clear and practical, so that the interactions between law enforcement, consumers, and licensees are predictable and understandable.
- g. Ensure that our streets, schools, and communities remain safe.
- h. Develop rules and guidance for certain relationships, such as employers and employees, landlords and tenants, students and professors that are clear and transparent.

6. Please summarize the rationale for the recommendation – why is it important?

Cannabis businesses are being taxed as if they are criminal enterprises. It is important for the Colorado tax law to reflect the reality that cannabis businesses are now legal under state law.

7. What issue or issues does your recommendation resolve? (Please identify the issues)

This recommendation would bring Colorado's tax code in line with the new reality that state cannabis businesses are legal under state law, and should be taxed accordingly.

8. Is there a dissenting voice in your working group about this recommendation? If yes, please provide a summary of the minority opinion about this recommendation.

Dissent lacked support of more than one member.

9. Which of the following does the recommendation impact (underline those that apply):

- a. Statute (legislation)
- b. Policy
- c. Rules and Regulations
- d. Other

10. Who owns implementation of the recommendation (underline those that apply):

- a. Governor
- b. State Legislature
- c. Attorney General
- d. Department of Revenue
- e. Department of Public Safety
- f. Department of Public Health and Environment
- g. Local Government
- h. Other: *(please describe)*

11. Is the recommendation dependent on another decision or action: If yes – specifically what actions or decisions are required before this recommendation can be implemented?

No.

12. Will the recommendation have a cost to implement? If yes, what is the reason for the cost? If yes, give an estimate of the cost.

No.

13. Give an estimate of how long it would take to implement the recommendation.

Should be part of the Omnibus bill.

**Amendment 64 Implementation Task Force
280(e) Recommendation 2**

2-12-13

1. Working Group Name: Tax/Funding and Civil Law Issues WG

2. Individual Sponsor(s): Consensus

3. Describe the Recommendation:

The Amendment 64 Task Force recommends that the Governor of Colorado contact and attempt to create a bi-partisan coalition of state governors that will push to reform IRC Code 280(E) at the Federal Level.

4. To which provision of Amendment 64 does the recommendation apply? If there is no applicable provision within Amendment 64, please justify why this recommendation is necessary.

Amendment 64 is silent on 280(e). A recommendation is necessary to bring the current law in line with the new legal status of marijuana businesses in the Colorado constitution.

5. Which guiding principle does this recommendation support (underline all those that apply)?

- a. Promote the health, safety, and well-being of Colorado's youth.
- b. Be responsive to consumer needs and issues.
- c. Propose efficient and effective regulation that is clear and reasonable, and not unduly burdensome.
- d. Create sufficient and predictable funding mechanisms to support the regulatory and enforcement scheme.
- e. Create a balanced regulatory scheme that is complimentary, not duplicative, and clearly defined between state and local licensing authorities.
- f. Establish tools that are clear and practical, so that the interactions between law enforcement, consumers, and licensees are predictable and understandable.
- g. Ensure that our streets, schools, and communities remain safe.
- h. Develop rules and guidance for certain relationships, such as employers and employees, landlords and tenants, students and professors that are clear and transparent.

6. Please summarize the rationale for the recommendation – why is it important?

Currently, cannabis businesses are being taxed as if they are criminal enterprises. It is important for the tax law to reflect the reality that these businesses are now legal under state law.

7. What issue or issues does your recommendation resolve? (Please identify the issues)

No resolution of the problem may occur at the State level without Federal cooperation so the recommendation is designed to increase public awareness and political pressure for the Federal government to respond to the letter inquiry and to assist all levels of government on how to lawfully and effectively work with the cannabis industry.

- 8. Is there a dissenting voice in your working group about this recommendation? If yes, please provide a summary of the minority opinion about this recommendation.**

No.

- 9. Which of the following does the recommendation impact (underline those that apply):**

- a. Statute (legislation)
- b. Policy
- c. Rules and Regulations
- d. **Other:** (*please describe*): Generating broad state-level support for federal guidance on how to tax proceeds of the manufacture and sale of marijuana legally sold under state law.

- 10. Who owns implementation of the recommendation (underline those that apply):**

- a. **Governor**
- b. State Legislature
- c. Attorney General
- d. Department of Revenue
- e. Department of Public Safety
- f. Department of Public Health and Environment
- g. Local Government
- h. Other: (*please describe*)

- 11. Is the recommendation dependent on another decision or action: If yes – specifically what actions or decisions are required before this recommendation can be implemented?**

This recommendation mirrors the Task Force recommendations regarding banking. The Governor should, through NAAG or other means, generate support for Colorado's efforts to cooperate with the Federal government and obtain solving the tax issues associated with 280(E).

- 12. Will the recommendation have a cost to implement? If yes, what is the reason for the cost? If yes, give an estimate of the cost.**

No.

- 13. Give an estimate of how long it would take to implement the recommendation.**

Less than one month

**Amendment 64 Implementation Task Force
280(e) Recommendation 3**

2-12-13

- 1. Working Group Name:** Tax/Funding and Civil Law Issues WG
- 2. Individual Sponsor(s):** Consensus
- 3. Describe the Recommendation:**

The Amendment 64 Task Force recommends that the Governor of Colorado contact and attempt to create a bi-partisan coalition of the Colorado Congressional Delegation that will push to reform IRC Code 280(E) at the Federal Level.

- 4. To which provision of Amendment 64 does the recommendation apply? If there is no applicable provision within Amendment 64, please justify why this recommendation is necessary.**

Amendment 64 is silent on 280(e). A recommendation is necessary to bring the current law in line with the new legal status of cannabis businesses.

- 5. Which guiding principle does this recommendation support (underline all those that apply)?**

- a. Promote the health, safety, and well-being of Colorado's youth.
- b. Be responsive to consumer needs and issues.
- c. Propose efficient and effective regulation that is clear and reasonable, and not unduly burdensome.
- d. Create sufficient and predictable funding mechanisms to support the regulatory and enforcement scheme.
- e. Create a balanced regulatory scheme that is complimentary, not duplicative, and clearly defined between state and local licensing authorities.
- f. Establish tools that are clear and practical, so that the interactions between law enforcement, consumers, and licensees are predictable and understandable.
- g. Ensure that our streets, schools, and communities remain safe.
- h. Develop rules and guidance for certain relationships, such as employers and employees, landlords and tenants, students and professors that are clear and transparent.

- 6. Please summarize the rationale for the recommendation – why is it important?**

Cannabis businesses are being taxed as if they are criminal enterprises. It is important for the tax law to reflect the reality that these businesses are now legal under state law.

- 7. What issue or issues does your recommendation resolve? (Please identify the issues)**

This recommendation would bring the federal tax code in line with the new reality that state marijuana businesses are legal, and should be taxed accordingly.

- 8. Is there a dissenting voice in your working group about this recommendation? If yes, please provide a summary of the minority opinion about this recommendation.**

No.

- 9. Which of the following does the recommendation impact (underline those that apply):**

- a. Statute (legislation)
- b. Policy
- c. Rules and Regulations
- d. **Other:** (*please describe*): Generating broad state-level support for federal guidance on how to tax proceeds of the manufacture and sale of marijuana legally sold under state law.

- 10. Who owns implementation of the recommendation (underline those that apply):**

- a. **Governor**
- b. State Legislature
- c. Attorney General
- d. Department of Revenue
- e. Department of Public Safety
- f. Department of Public Health and Environment
- g. Local Government
- h. Other: (*please describe*)

- 11. Is the recommendation dependent on another decision or action: If yes – specifically what actions or decisions are required before this recommendation can be implemented?**

No

- 12. Will the recommendation have a cost to implement? If yes, what is the reason for the cost? If yes, give an estimate of the cost.**

No.

- 13. Give an estimate of how long it would take to implement the recommendation.**

Less than one month

Amendment 64 Implementation Task Force Working Group Recommendation Template

Contract Law #1

1. **Working Group Name:** Tax/Funding and Civil Law Issues WG
2. **Individual Sponsor(s):** Consensus
3. **Describe the Recommendation:**

The Amendment 64 Task Force recommends the General Assembly clarify in statute that it is the public policy of Colorado that contracts shall not be void or voidable on the basis that the subject matter of the contract pertains to or the parties are, or are associated with, individuals or businesses that are operating pursuant to Colorado's marijuana laws.

4. **To which provision of Amendment 64 does the recommendation apply? If there is no applicable provision within Amendment 64, please justify why this recommendation is necessary.**

Amendment 64 is silent on how it would affect the enforceability of contracts relating to marijuana, which under existing state public policy could be deemed *void ab initio* because they may pertain to an underlying federally illegal transaction.

5. **Which guiding principle does this recommendation support (underline all those that apply)?**
 - a. Promote the health, safety, and well-being of Colorado's youth.
 - b. Be responsive to consumer needs and issues.
 - c. Propose efficient and effective regulation that is clear and reasonable, and not unduly burdensome.
 - d. Create sufficient and predictable funding mechanisms to support the regulatory and enforcement scheme.
 - e. Create a balanced regulatory scheme that is complimentary, not duplicative, and clearly defined between state and local licensing authorities.
 - f. Establish tools that are clear and practical, so that the interactions between law enforcement, consumers, and licensees are predictable and understandable.
 - g. Ensure that our streets, schools, and communities remain safe.
 - h. Develop rules and guidance for certain relationships, such as employers and employees, landlords and tenants, students and professors that are clear and transparent.
6. **Please summarize the rationale for the recommendation – why is it important?**

Under existing law, contracts that have the purpose of conducting illegal transactions, such as the purchase and sale of marijuana because it is illegal under federal law, may be deemed by a court of law to be void and may not be enforced by either party or may be voidable at the election of

either party. The purpose of the recommendation is to ensure that contracts entered into by businesses and individuals who are operating pursuant to Colorado's marijuana laws are not deemed unenforceable by the Colorado courts because they may have a connection to marijuana business operations that are operating under Colorado's marijuana laws. The purpose also is to ensure that non-marijuana businesses are able to enforce their contracts with individuals or businesses operating under Colorado's marijuana laws.

7. What issue or issues does your recommendation resolve? (Please identify the issues)

This recommendation provides clarity to contracting parties and the courts as to the enforceability of their contracts and preserves freedom of contract principles that lie at the foundation of Colorado's common law.

8. Is there a dissenting voice in your working group about this recommendation? If yes, please provide a summary of the minority opinion about this recommendation.

N/A

9. Which of the following does the recommendation impact (underline those that apply):

- a. Statute (legislation)
- b. Policy
- c. Rules and Regulations
- d. Other: *(please describe)*

10. Who owns implementation of the recommendation (underline those that apply):

- a. Governor
- b. State Legislature
- c. Attorney General
- d. Department of Revenue
- e. Department of Public Safety
- f. Department of Public Health and Environment
- g. Local Government
- h. Other: *(please describe)*

11. Is the recommendation dependent on another decision or action: If yes – specifically what actions or decisions are required before this recommendation can be implemented?

The General Assembly should implement the recommendation by enacting legislation to guide Colorado courts.

12. Will the recommendation have a cost to implement? If yes, what is the reason for the cost? If yes, give an estimate of the cost.

No.

13. Give an estimate of how long it would take to implement the recommendation.

Immediately upon enactment of legislation.

**Amendment 64 Implementation Task Force
Working Group Recommendation Template**

Property #1

- 1. Working Group Name:** Tax/Funding and Civil Law Working Group
- 2. Individual Sponsor(s):** Consensus
- 3. Describe the Recommendation:**

The plain language of Amendment 64 Section 6(d) makes it clear that the intent of the voters was to maintain the *status quo* for Colorado property owners. The Amendment 64 Task Force recommends the General Assembly adopt no new statutes or regulations modifying existing Colorado property law. The Task Force also recommends that violations of real property owner's policies regarding possession or consumption of marijuana on said property be treated similar to the violation for possession or consumption of alcohol on the premises, including any civil or criminal consequences.

- 4. To which provision of Amendment 64 does the recommendation apply? If there is no applicable provision within Amendment 64, please justify why this recommendation is necessary.**

Property Rights (Amendment 64(6)(d) & 4(f))

“(d) NOTHING IN THIS SECTION SHALL PROHIBIT A PERSON, EMPLOYER, SCHOOL, HOSPITAL, DETENTION FACILITY, CORPORATION OR ANY OTHER ENTITY WHO OCCUPIES, OWNS OR CONTROLS A PROPERTY FROM PROHIBITING OR OTHERWISE REGULATING THE POSSESSION, CONSUMPTION, USE, DISPLAY, TRANSFER, DISTRIBUTION, SALE, TRANSPORTATION, OR GROWING OF MARIJUANA ON OR IN THAT PROPERTY.”

- 5. Which guiding principle does this recommendation support (underline all those that apply)?**
 - a. Promote the health, safety, and well-being of Colorado's youth.
 - b. Be responsive to consumer needs and issues.
 - c. Propose efficient and effective regulation that is clear and reasonable, and not unduly burdensome.
 - d. Create sufficient and predictable funding mechanisms to support the regulatory and enforcement scheme.
 - e. Create a balanced regulatory scheme that is complimentary, not duplicative, and clearly defined between state and local licensing authorities.

- f. Establish tools that are clear and practical, so that the interactions between law enforcement, consumers, and licensees are predictable and understandable.
- g. Ensure that our street, schools, and communities remain safe.
- h. Develop rules and guidance for certain relationships, such as employers and employees, landlords and tenants, students and professors that are clear and transparent.
- i. Take action which is faithful to the text of Article 18, Section 16 of the Colorado Constitution.

6. Please summarize the rationale for the recommendation-why is it important?

There is a need to provide real property owners assurance that they are able to enforce their right to choose how their property is used. This will also provide clarity for rights between the landlords and tenants. Also, this recommendation will ensure that the rights that real property owners had prior to the passage of Amendment 64 remain unchanged.

7. What issue or issues does your recommendation resolve?

This provides guidance for real property owners and the relationship between landlords and tenants.

8. Is there a dissenting voice in your working group about this recommendation? If yes, please provide a summary of the minority opinion about this recommendation.

No

9. Which of the following does the recommendation impact (underline those that apply):

- a. Statute (legislation)
- b. Policy
- c. Rules and Regulations
- d. Other: *(please describe)*

10. Who owns implementation of the recommendation (underline those that apply):

- a. Governor
- b. State Legislature (maybe)
- c. Attorney General
- d. Department of Revenue

- e. Department of Public Safety
- f. Department of Public Health and Environment
- g. Local Government
- h. Other: (*Please describe*) It is possible legislation would be required to clarify that alcohol and marijuana be treated the same for purposes of trespassers or policy violations but it is not clear that is necessary.

11. Is the recommendation dependent on another decision or action: If yes – specifically what actions or decisions are required before this recommendation can be implemented?

No

12. Will the recommendation have a cost to implement? If yes, what is the reason for the cost? If yes, give an estimate of the cost.

No

13. Give an estimate of how long it would take to implement the recommendation.

N/A

Amendment 64 Implementation Task Force Working Group Recommendation Template

1. **Working Group Name:** *Criminal Law Issues Working Group*
2. **Individual Sponsor(s):**
3. **Describe the Recommendation:** *This is the first set of proposed revisions to Title 18, C.R.S.*
4. **To which provision of Amendment 64 does the recommendation apply? If there is no applicable provision within Amendment 64, please justify why this recommendation is necessary.**

These proposed statutory changes make parts of Title 18 consistent with Article 18, Section 16 of the Colorado Constitution and decriminalize certain marijuana and paraphernalia first offenses for children and young adults.

5. **Which guiding principle does this recommendation support (underline all those that apply)?**
 - a. **Promote the health, safety, and well-being of Colorado's youth.**
 - b. Be responsive to consumer needs and issues.
 - c. Propose efficient and effective regulation that is clear and reasonable, and not unduly burdensome.
 - d. Create sufficient and predictable funding mechanisms to support the regulatory and enforcement scheme.
 - e. Create a balanced regulatory scheme that is complimentary, not duplicative, and clearly defined between state and local licensing authorities.
 - f. Establish tools that are clear and practical, so that the interactions between law enforcement, consumers, and licensees are predictable and understandable.
 - g. Ensure that our streets, schools, and communities remain safe.
 - h. Develop rules and guidance for certain relationships, such as employers and employees, landlords and tenants, students and professors that are clear and transparent.
 - i. **Take action which is faithful to the text of Article 18, Section 16 of the Colorado Constitution.**
6. **Please summarize the rationale for the recommendation – why is it important?**

Statutes must not conflict with constitutional mandates. These revisions address conflicts created by passage of Amendment 64 and reflect broad sentiment in favor of treatment and education in response to marijuana first offenses committed by young people.

7. What issue or issues does your recommendation resolve?

These recommendations bring consistency to the Colorado Revised Statutes and strike a balance between education and criminalization of young people.

8. Is there a dissenting voice in your working group about this recommendation? If yes, please provide a summary of the minority opinion about this recommendation.

By Ed Wood:

It is important to maintain the intent of 18-18-425, which is to avoid making Colorado's drug culture more visible and enticing, and to avoid increasing the perception of acceptability of the use of recreational drugs. Widespread use of drugs weakens our society and makes it less productive and competitive. Changes made to bring 18-18-425 into compliance with Amendment 64 should not dilute this message.

9. Which of the following does the recommendation impact (underline those that apply):

- a. Statute (legislation)
- b. Policy
- c. Rules and Regulations
- d. Other: (please describe)

10. Who owns implementation of the recommendation (underline those that apply):

- a. Governor
- b. State Legislature
- c. Attorney General
- d. Department of Revenue
- e. Department of Public Safety
- f. Department of Public Health and Environment
- g. Local Government
- h. Other: (please describe)

11. Is the recommendation dependent on another decision or action: If yes – specifically what actions or decisions are required before this recommendation can be implemented?

12. Will the recommendation have a cost to implement? If yes, what is the reason for the cost? If yes, give an estimate of the cost.

Two of these recommendations seek to avoid criminalization of children and young adults in first offense situations involving possession of paraphernalia and small amounts of marijuana. Moving these cases out of municipal courts and into state courts may involve increased cost to the Colorado State Judicial Branch.


13. Give an estimate of how long it would take to implement the recommendation.

Upon passage.

C.R.S. cite	modification	why
18-18-406 (1.1)	<p>Any adult under 21 years of age who possesses one ounce of marijuana or less shall upon the first offense be subject to a civil charge of not more than \$100 as well as treatment and conditions as may be established by a court or magistrate. Failure to comply with the terms and conditions of such civil order shall subject the person cited to contempt of court or the matter may be referred back to the citing law enforcement agency and may be refiled as a class 2 petty offense under this title. Any refiling must occur within one year from the date of said civil court order establishing terms and conditions.</p> <p>“First offense” in this context, is defined as any marijuana offense under CRS 18-18-406 that involves any official action, which shall include: conviction, adjudication, non-judicial diversion, deferred prosecution, deferred sentence or civil citation. Said first offense must occur within 3 years of any subsequent offense.</p>	<p>Colo. Const. Art. XVIII, Sec. 16 (1)(b)(II)</p> <p>This addresses the gap between people under 18 (who would be covered by the previously approved MIP/marijuana recommendation) and people 21 or over.</p>
18-18-406 (5)	<p>Transferring or dispensing more than one ounce but not more than two ounces or less of marijuana from one person twenty-one years of age or over to another person twenty-one years of age or over for no consideration is a class 2 petty offense and shall not be deemed dispensing or sale thereof.</p>	<p>Colo. Const. Art. XVIII, Sec. 16 (3)(c)</p> <p>This decriminalizes the transfer of an ounce or less of marijuana between people 21 or over.</p>

18-18-426	Except as authorized in Article 18, Sections 14 and 16 of the Colorado Constitution, As as used in sections 18-18-425 to 18-18-430, unless the context otherwise requires:	Colo. Const. Art. XVIII, Sec. 16 (2)(g) and (4)(a) through (e)
<p data-bbox="186 520 581 800"><i>This statute does not recite a substantive chargeable offense; it merely clarifies legislative intent behind enactment of statutes criminalizing possession, manufacture, sale, delivery, and advertisement of drug paraphernalia.</i></p> <p data-bbox="186 842 581 1331"><i>The consensus of the working group is that the General Assembly should consider revision of this legislative declaration in light of Article 18, Section 16 of the Colorado Constitution. A person 21 or over now has a constitutional right to possess accessories for the purpose of using marijuana. It seems appropriate to revise the legislative declaration to make it consistent with the new constitutional provision.</i></p>	<p data-bbox="613 453 1011 1436">(1) The general assembly hereby finds and declares that the possession, sale, manufacture, delivery, or advertisement of drug paraphernalia results in the legitimization and encouragement of the illegal use of controlled substances by making the drug culture more visible and enticing and that the ready availability of drug paraphernalia tends to promote, suggest, or increase the public acceptability of the illegal use of controlled substances. Therefore, the purposes of the provisions controlling drug paraphernalia are: (a) To protect and promote the public peace, health, safety, and welfare by prohibiting the possession, sale, manufacture, and delivery, or advertisement, of drug paraphernalia; and (b) To deter the use of controlled substances by controlling the drug paraphernalia associated with their use.</p>	<p data-bbox="1036 453 1429 1297">Article 18, Section 16 (2)(g): (g) "MARIJUANA ACCESSORIES" MEANS ANY EQUIPMENT, PRODUCTS, OR MATERIALS OF ANY KIND WHICH ARE USED, INTENDED FOR USE, OR DESIGNED FOR USE IN PLANTING, PROPAGATING, CULTIVATING, GROWING, HARVESTING, COMPOSTING, MANUFACTURING, COMPOUNDING, CONVERTING, PRODUCING, PROCESSING, PREPARING, TESTING, ANALYZING, PACKAGING, REPACKAGING, STORING, VAPORIZING, OR CONTAINING MARIJUANA, OR FOR INGESTING, INHALING, OR OTHERWISE INTRODUCING MARIJUANA INTO THE HUMAN BODY.</p> <p data-bbox="1036 1373 1429 1896">Article 18, Section 16 (3)(a): (3) Personal use of marijuana. NOTWITHSTANDING ANY OTHER PROVISION OF LAW, THE FOLLOWING ACTS ARE NOT UNLAWFUL AND SHALL NOT BE AN OFFENSE UNDER COLORADO LAW OR THE LAW OF ANY LOCALITY WITHIN COLORADO OR BE A BASIS FOR SEIZURE OR FORFEITURE OF ASSETS UNDER COLORADO LAW FOR PERSONS</p>

		<p>TWENTY-ONE YEARS OF AGE OR OLDER:</p> <p>(a) POSSESSING, USING, DISPLAYING, PURCHASING, OR TRANSPORTING MARIJUANA ACCESSORIES OR ONE OUNCE OR LESS OF MARIJUANA.</p>
18-18-428 (3)	<p>Any person under 21 years of age who possesses drug paraphernalia used, designed, or intended for use in consuming marijuana shall upon the first offense be subject to a civil charge of not more than \$100 as well as treatment and conditions as may be established by a court or magistrate. Failure to comply with the terms and conditions of such civil order shall subject the person cited to contempt of court or the matter may referred back to the citing law enforcement agency and may be refiled as a class 2 petty offense under this title. Any refiling must occur within one year from the date of said civil court order establishing terms and conditions.</p> <p>“First offense” in this context, is defined as any marijuana offense under CRS 18-18-406 that involves any official action, which shall include: conviction, adjudication, non-judicial diversion, deferred prosecution, deferred sentence or civil citation. Said first offense must occur within 3 years of any subsequent offense.</p>	<p>The objective is to create a non-criminal first-offense mechanism to deal with paraphernalia offenses committed by people under the age of 21. This parallels the other recommendations creating a non-criminal first offense mechanism for possession of one ounce or less of marijuana.</p>
[none]	<p>[As used in article 18 of Title 18, C.R.S.]</p> <p>Section 18-18-102 (35.5)</p>	<p>Various parts of Article 18, Section 16 create a right to “transfer” marijuana or marijuana products. Neither</p>

	<p>“Transfer” means to deliver or convey.</p>	<p>Article 18, Section 16 nor section 18-18-102, C.R.S., defines “transfer” in the context of marijuana. Section 18-18-102 (7) defines “[d]eliver or [d]elivery.” The statute: “[U]nless the context otherwise requires, [deliver or delivery] means to transfer or attempt to transfer a substance, actually or constructively, from one person to another, whether or not there is an agency relationship.”</p> <p>Dictionary.com: trans·fer  v. træn's'f3r, 'træns fər; <i>n.</i>, <i>adj.</i> 'træns fər Show Spelled [v. trans-fur, trans-fer; <i>n.</i>, <i>adj.</i> trans-fer] Show IPA <i>verb</i>, trans·ferred, trans·fer·ring, <i>noun, adjective verb (used with object)</i></p> <ol style="list-style-type: none"> 1. to convey or remove from one place, person, etc., to another: <i>He transferred the package from one hand to the other.</i> 2. to cause to pass from one person to another, as thought, qualities, or power; transmit. 3. <i>Law.</i> to make over the <u>possession</u> or <u>control</u> of: <i>to transfer a title to land.</i> 4. to imprint, impress, or otherwise convey (a drawing, design, pattern, etc.) from one surface to another. <p>Merriam-webster.com:</p> <p>¹trans·fer <i>verb</i> \tran(t)s-'fər, 'tran(t)s-, \</p>
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		<p>trans·ferredtrans·fer·ring</p> <p>Definition of <i>TRANSFER</i></p> <p>transitive verb</p> <p>1</p> <p><i>a</i> : to convey from one person, place, or situation to another : <u>move</u>, <u>shift</u></p> <p><i>b</i> : to cause to pass from one to another : <u>transmit</u></p> <p><i>c</i> : <u>transform</u>, <u>change</u></p> <p>2</p> <p>: to make over the possession or control of : <u>convey</u></p> <p>3</p> <p>: to print or otherwise copy from one surface to another by contact</p>
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**Amendment 64 Implementation Task Force
Working Group Recommendation Template**

1. Working Group Name: Criminal Law-Law Enforcement

2. Individual Sponsor(s): John Jackson

3. Describe the Recommendation:

Recommend that any amount of marijuana which is recovered from a person under arrest be considered evidence and/or contraband and thereby may be destroyed. There should be a due process clause established in which a person can proceed to a court to obtain an order to have the marijuana returned to them.

4. To which provision of Amendment 64 does the recommendation apply? If there is no applicable provision within Amendment 64, please justify why this recommendation is necessary.

Section 16 (1) (b)-In the interest of health and public safety.

This is clearly a matter of public safety in that there is a clear contradiction in what constitutes a violation of the law. Since most county jails have *refused to accept* any personal use marijuana, citing it to be contraband under Federal Law, thereby causing local agencies to spend tremendous amounts of time booking the marijuana into their property rooms, in separate locations from the transported prisoners are jailed.

5. Which guiding principle does this recommendation support (underline all those that apply)?

- a. Promote the health, safety, and well-being of Colorado's youth.
- b. Be responsive to consumer needs and issues.
- c. Propose efficient and effective regulation that is clear and reasonable, and not unduly burdensome.
- d. Create sufficient and predictable funding mechanisms to support the regulatory and enforcement scheme.
- e. Create a balanced regulatory scheme that is complimentary, not duplicative, and clearly defined between state and local licensing authorities.
- f. Establish tools that are clear and practical, so that the interactions between law enforcement, consumers, and licensees are predictable and understandable.
- g. Ensure that our streets, schools, and communities remain safe.
- h. Develop rules and guidance for certain relationships, such as employers and employees, landlords and tenants, students and professors that are clear and transparent.

6. Please summarize the rationale for the recommendation – why is it important?

At this point, most county jails are *not* taking legal possession of personal use marijuana as part of any prisoner's personal property. Amendment 64 was billed as a way to give back precious time to law enforcement agencies to focus on larger criminal issues. What this has now done is created more bureaucracy and paperwork for all involved. Because marijuana is illegal by Federal law, it is contraband in these facilities and it will *not* be accepted as personal property. The arresting jurisdiction must then deal with the marijuana from there forward by more often than not transporting it to another location to be booked into what are already generally filled evidence/property rooms.

There is a very large concern within the law enforcement community that we cannot legally give back any marijuana to a person. So much so that some Chiefs of Police and Sheriffs have publicly stated that they will not return marijuana to anyone under any situation outside of a court order. There is also a great fear that we will lose the ability to apply for, and accept, a tremendous amount of grant money from the Federal Government as we would be complicit with the trade of a controlled substance. Our grant applications may not even be considered for funding.

7. What issue or issues does your recommendation resolve?

Provides clarification to law enforcement on how they should handle personal use marijuana when a person is transported to a county jail, or detention facility, and they refuse to take it with the person's personal property.

Is there a dissenting voice in your working group about this recommendation? If yes, please provide a summary of the minority opinion about this recommendation.

Lauren Davis

I agree that law enforcement should be provided with guidance about what to do with marijuana that is on people's persons when they are taken to jail. There is no question that it cannot be brought into a correctional facility. But I believe the legislature should draft a bill requiring law enforcement to maintain the items and return it to prisoners upon their release, as they currently do with other personal property.

Marijuana is now legal under state law. Therefore it should not be treated any differently than other items maintained by law enforcement as personal property. Law enforcement must obey State constitutional mandates; they are not deputized to enforce federal law and have no authority to do so. Marijuana has been legal for medical uses for the past decade. Law enforcement sites no example of any federal grants or money that they have been denied in the past decade. Law enforcement cannot ignore State Constitutional obligations because they disagree with the will of the voters.

Minority View—Criminal Law Issues Working Group Recommendation re: Prisoner Property

Brian Connors

This recommendation addresses situations where: 1) a person is arrested; 2) the arrestee is 21 or over; and 3) the arrestee in possession of an ounce or less of marijuana.

County jails and state prisons have a compelling and obvious security interest in preventing introduction of contraband. Marijuana may not be introduced into the detention areas of a prison or jail. When a person is arrested and processed in the booking area of a jail, their personal property is collected, inventoried, and secured in a locked place not accessible to inmates. Upon posting bond or upon conclusion of a sentence, the personal property is returned to the person as they leave the jail. ***The issue here is whether a lawful amount of marijuana in a person's pocket at the time of arrest gets destroyed or whether it gets inventoried and stored together with other personal items—cell phone, tobacco, wallet, keys, etc.***

It's not clear why county jails would determine that it is imperative to store a legal amount of marijuana in a locked evidence storage room rather than in the locked inmate property room. Each is inaccessible to inmates. The locked evidence room is for storage of items which are evidence of a crime and necessary to prosecution of a case. The locked inmate property room is for storage of items which are not evidence of a crime but are in the possession of the person at the time of arrest.

Article 18, Section 16 (3) of the Colorado Constitution says that possession of an ounce or less of marijuana by a person 21 or over "shall not be ... a basis for seizure or forfeiture of assets under Colorado law" This recommendation—a green light for automatic and summary destruction of personal property upon arrest—is entirely inconsistent with this constitutional provision. The General Assembly cannot enact a statute authorizing forfeiture of personal property when Article 18, Section 16 (3) expressly forbids it. A law enforcement agency which proceeds in a manner inconsistent with clear constitutional mandate invites gross civil liability.

An extensive body of state and federal case law recognizes that law enforcement agencies must establish procedures to secure and inventory arrestee property. The procedures are necessary to: 1) protect the owner's property while the owner is in custody; 2) protect law enforcement against claims or disputes over lost or destroyed property; and 3) to protect law enforcement from potential danger.

8. Which of the following does the recommendation impact (underline those that apply):

- a. Statute (legislation)
- b. Policy
- c. Rules and Regulations
- d. Other: (please describe)

9. Who owns implementation of the recommendation (underline those that apply):

- a. Governor
- b. State Legislature
- c. Attorney General
- d. Department of Revenue
- e. Department of Public Safety
- f. Department of Public Health and Environment
- g. Local Government
- h. Other: (please describe)

10. Is the recommendation dependent on another decision or action: If yes – specifically what actions or decisions are required before this recommendation can be implemented?

Yes, there are some legal implications with this which need to be considered.

11. Will the recommendation have a cost to implement? If yes, what is the reason for the cost? If yes, give an estimate of the cost.

No, there is no cost associated with this, outside of the resource costs to law enforcement agencies who tie up resources with this.

12. Give an estimate of how long it would take to implement the recommendation.

Once a decision is made, law enforcement agencies can then proceed with appropriate policies.

Amendment 64 Implementation Task Force Working Group Recommendation Template

- 1. Working Group Name: Criminal Law-Law Enforcement**
- 2. Individual Sponsor(s): John Jackson**
- 3. Describe the Recommendation:**

Recommend that subject to Article 18, Section 16 (3-4), clear guidelines are established which detail that when a law enforcement agency seizes in good faith illegal live marijuana plants, in excess of the authorized 6 plant limit per person, that the law enforcement agency is under no obligation to keep them alive and that they may be destroyed subject to a court order.

- 4. To which provision of Amendment 64 does the recommendation apply? If there is no applicable provision within Amendment 64, please justify why this recommendation is necessary.**

Section 16 (1) (b)-In the interest of health and public safety. This recommendation is necessary because it is unreasonable to think that any law enforcement agency can keep marijuana plants alive for any period of time. The technical expertise, equipment, and space, that we would have to purchased to do this would constitute an unreasonable unfunded mandate that could not be instituted or managed across our state. There is also some question that if we continued the growth of any seized marijuana plants that we would be in violation of Federal law.

- 5. Which guiding principle does this recommendation support (underline all those that apply)?**

- a. Promote the health, safety, and well-being of Colorado's youth.
- b. Be responsive to consumer needs and issues.
- c. Propose efficient and effective regulation that is clear and reasonable, and not unduly burdensome.
- d. Create sufficient and predictable funding mechanisms to support the regulatory and enforcement scheme.
- e. Create a balanced regulatory scheme that is complimentary, not duplicative, and clearly defined between state and local licensing authorities.
- f. Establish tools that are clear and practical, so that the interactions between law enforcement, consumers, and licensees are predictable and understandable.
- g. Ensure that our streets, schools, and communities remain safe.

- h. Develop rules and guidance for certain relationships, such as employers and employees, landlords and tenants, students and professors that are clear and transparent.

6. Please summarize the rationale for the recommendation – why is it important?

At this point, law enforcement may confiscate anything over 6 plants per person as being illegal, under certain circumstances. It is unreasonable to think that law enforcement can, or should, keep these plants alive. The value of these plants, if any, should be determined via established civil law procedures and/or recourse should a person, or business, choose to seek financial compensation.

Simply put, marijuana plants will not survive in a law enforcement vehicle, or evidence room, for any length of time. These plants are functionally dead once they are removed from the carefully established conditions of a growing area. The fear of what have become huge financial judgments has caused law enforcement to *not* take enforcement action when, and where, it should have many times across our state. Illegal grow operations are thriving because of it with most law enforcement agencies being afraid to seize clearly illegal grow operation plants. There should be some reasonable effort, on behalf of law enforcement, to seize less mature plants as both possible and reasonable. We believe this small effort will limit some possible civil recourse down the road for law enforcement agencies, while respecting the growing rights of people with amendment 64 as a whole. There is no question that this is clearly a public safety issue which is at the heart of the quality of life in our neighborhoods.

The good faith exception provides law enforcement with appropriate judicial cover to properly do its job. The establishment of proper rules and regulations should not be predicated on a possible fear of law enforcement acting in bad faith. As stated previously, there are clear remedies for that, and for the valuation of these plants, in civil court with much bigger implications than this recommendation pertains to.

7. What issue or issues does your recommendation resolve?

This will clarify for law enforcement how, when and how they should seize and handle illegally grown live marijuana plants. This should also create a probable cause standard for seizure with a good faith exception for law enforcement agencies who are operating under good faith and color of law.

8. Is there a dissenting voice in your working group about this recommendation? If yes, please provide a summary of the minority opinion about this recommendation.

Lauren Davis

No plants or evidence should be destroyed until after a person is found guilty at trial or after they plead guilty. See Art. 18, Sec. 14. The fundamental premise behind our system of justice is that people are innocent until proven guilty by a jury of their peers. This rule turns that premise on its head.

This rule also creates the wrong incentives for law enforcement and likely shields them from any repercussions. The ‘good faith’ standard rewards incompetence, lack of due diligence and shoddy police work. Judges are loath to find that law enforcement did not act in good faith, so as a practical matter, this rule will deprive citizens of a remedy from police misconduct. If law enforcement erroneously seizes someone’s property, that citizen must be entitled to a remedy. And they should not have to spend thousands of dollars to do so.

Minority View--Criminal Law Issues Working Group Recommendation re: Seizure Of Live Marijuana Plants

Brian Connors

In summary, this is a novel and alarming recommendation that the General Assembly authorize law enforcement to destroy physical evidence necessary to both the prosecution and the defense in a criminal prosecution. Law enforcement is required to preserve and not destroy evidence any the prosecution intends to use against a citizen in a criminal prosecution. A substantial body of U.S. and Colorado case law addresses sanctions and remedies for destruction of evidence. Nothing in that body of case law contemplates summary destruction of an entire class of evidence.

The recommendation uses the phrase “good faith.” In the context of *search warrant execution*, “good faith mistake” is defined in section 16-3-308 (2)(a), C.R.S., Colorado’s codification of the good faith exception to the exclusionary rule. That definition of “good faith” applies in situations where the law enforcement officer has sought and received judicial approval for a search warrant. The law enforcement officer is presumed to be acting in good faith after the law enforcement officer has sought and received judicial permission to act. That’s not what’s proposed here. What’s proposed here is that the law enforcement officer would be authorized to make an ad hoc decision in the field to destroy evidence without guidance from a judge. Summary destruction of evidence by law enforcement officers in the field should not be accorded the same presumption of good faith as the actions of a law enforcement officer who has consulted with a judge before acting.

We should expect frequent legitimate disputed issues of fact concerning live plants. There will be factual and legal disputes about whether plants were “mature and flowering.” In situations where there are more than six plants, there will be factual and legal disputes about whether there were more than six plants per capita in a residence. There will be situations where one or both parties to the dispute will ask experts to examine the plants or will ask the court to examine the plants. Destruction of the live plants eliminates this evidence and makes it impossible to resolve the dispute. A defendant in a criminal case has the right to examine the evidence the prosecution intends to introduce at trial. That right includes the right to seek independent examination of the evidence by defense-retained experts.

A statute authorizing destruction of an entire class of evidence would give rise to extensive litigation in criminal and civil cases. In criminal cases, prosecutors will risk dismissal of cases if a

court finds that law enforcement destroyed evidence. Citizens whose plants are seized and destroyed will seek civil remedies. One member of our working group reported that a single plant could be valued at \$7,500.

9. Which of the following does the recommendation impact (underline those that apply):

- a. Statute (legislation)
- b. Policy
- c. Rules and Regulations
- d. Other: *(please describe)*

10. Who owns implementation of the recommendation (underline those that apply):

- a. Governor
- b. State Legislature
- c. Attorney General
- d. Department of Revenue
- e. Department of Public Safety
- f. Department of Public Health and Environment
- g. Local Government
- h. Other: *(please describe)*

11. Is the recommendation dependent on another decision or action: If yes – specifically what actions or decisions are required before this recommendation can be implemented?

Yes, there would need to be a legal opinion on this from the Attorney General's office.

12. Will the recommendation have a cost to implement? If yes, what is the reason for the cost? If yes, give an estimate of the cost.

No, there would be no cost to implement this.

13. Give an estimate of how long it would take to implement the recommendation.

Once a legal determination was made, law enforcement agencies could move forward with the implementation of policies and procedures.

Amendment 64 Implementation Task Force Working Group Recommendation Template

1. Working Group Name: Criminal Law-Law Enforcement

2. Individual Sponsor(s): Law Enforcement Issues Sub-Committee

3. Describe the Recommendation:

This recommendation is an issue of state-wide concern. Recommend that a reasonable, maximum amount of marijuana that can be legally possessed of the “marijuana produced by six plants” be codified in statute. The amount that can be kept at the location of a non-commercial cultivation should be limited to an amount consistent with personal use and should be kept in a secure, locked container.

Personal use is defined as no more than 16 ounces of a usable form of dried, cured marijuana product, which can be stored at the site where the marijuana is harvested.

It is recommended that the General Assembly also make clear that Amendment 20 rights not be “piggy-backed” with Amendment 64 rights.

4. To which provision of Amendment 64 does the recommendation apply? If there is no applicable provision within Amendment 64, please justify why this recommendation is necessary.

Recommend that Section 16 (3) (b) define a reasonable maximum amount of marijuana which can be legally possessed of the “marijuana produced by six plants”.

Section 16 (1) (b)-In the interest of health and public safety. This recommendation is necessary because excess amounts of marijuana will increase likelihood of diversion to persons under 21 years of age, diversion outside the State of Colorado and violent crimes such as home invasion robberies in residential neighborhoods.

5. Which guiding principle does this recommendation support (underline all those that apply)?

- a. Promote the health, safety, and well-being of Colorado’s youth.
- b. Be responsive to consumer needs and issues.
- c. Propose efficient and effective regulation that is clear and reasonable, and not unduly burdensome.
- d. Create sufficient and predictable funding mechanisms to support the regulatory and enforcement scheme.

- e. Create a balanced regulatory scheme that is complimentary, not duplicative, and clearly defined between state and local licensing authorities.
- f. Establish tools that are clear and practical, so that the interactions between law enforcement, consumers, and licensees are predictable and understandable.
- g. Ensure that our streets, schools, and communities remain safe.
- h. Develop rules and guidance for certain relationships, such as employers and employees, landlords and tenants, students and professors that are clear and transparent.

6. Please summarize the rationale for the recommendation – why is it important?

There appears to be a conflict in the language of Amendment 64. Under Section 16 (3)-Personal use of marijuana-“Notwithstanding any other provision of law, the following acts are not unlawful...” (a) **“Possessing**, using, displaying, purchasing, or transporting marijuana accessories or **one ounce or less of marijuana**” and (b) “Possessing, Growing, Processing, or transporting no more than six marijuana plants, with three or fewer being mature, flowering plants, and **possession of the marijuana produced by the plants on the premises where the plants are grown**, provided that the growing takes place in an enclosed, locked space, is not made available for sale.”

The limiting of the amount of marijuana which can be kept at the location where the marijuana is grown is necessary due to public safety concerns.

- 1. The risk of home invasion robberies and burglaries increase when large amounts of marijuana are possessed at any premise and residential cultivations have increasingly become targets of violent crime. These crimes affect the victims who possess the marijuana as well as the community at large.
- 2. The likelihood of diversion increases when an amount of marijuana is kept beyond what can be reasonably consumed by the individual consumer in a reasonable time-period.

3. What issue or issues does your recommendation resolve?

Provides clarification to law enforcement officers regarding the amount of processed, finished marijuana that can be possessed by an individual at a non-commercial marijuana cultivation. As Amendment 64 currently reads, possession of an ounce or less is legal and also possession of marijuana produced by the allowed six plants is also legal if possession occurs at the location where the marijuana is grown.

4. Is there a dissenting voice in your working group about this recommendation? If yes, please provide a summary of the minority opinion about this recommendation.

Lauren Davis- I have serious concerns that this is an unconstitutional rule in direct contravention to the language in the Constitution.

Turning to the rules of Constitutional construction, the drafters of Amendment 64 knew how to impose limitations on legal amounts when they so intended. The fact that they did not put such a limitation in Section (b) means that it was not their intent to impose a limit on the amount that could be possessed. They knew they were drafting a

law about a plant that is subject to various yields.

Additionally, they were very specific about where you could possess it/store it beyond the 1 ounce limitation in Section (a). They clearly thought through the language carefully. The plain language is clear.

This recommendation also creates a law that potentially is impossible for a citizen to comply. Every plant will yield a different amount of product; this rule creates a situation where a person may intend to comply, but cannot comply due to a circumstance of nature, which is out of their control, ie. Their plant harvest yields 24 ounces or more. If this rule is passed, at a minimum, the Legislature must create a statutory mechanism for lawful disposal of excess product produced by the plants so that citizens can legally comply with this rule.

Regardless, I support the idea that this must be considered a matter of state-wide concern which locals cannot further limit. A citizen's constitutional rights cannot vary depending on which town they live in or which side of the street they live on in a county.

4. **Which of the following does the recommendation impact (underline those that apply):**
 - a. Statute (legislation)
 - b. Policy
 - c. Rules and Regulations
 - d. Other: *(please describe)*
5. **Who owns implementation of the recommendation (underline those that apply):**
 - a. Governor
 - b. State Legislature
 - c. Attorney General
 - d. Department of Revenue
 - e. Department of Public Safety
 - f. Department of Public Health and Environment
 - g. Local Government
 - h. Other: *(please describe)*
6. **Is the recommendation dependent on another decision or action: If yes – specifically what actions or decisions are required before this recommendation can be implemented?**
7. **Will the recommendation have a cost to implement? If yes, what is the reason for the cost? If yes, give an estimate of the cost.**
8. **Give an estimate of how long it would take to implement the recommendation.**

**Amendment 64 Implementation Task Force
Working Group Recommendation**

CS / SI R1

- 1. Working Group Name:** Consumer Safety / Social Issues
- 2. Individual Sponsor(s):** Unanimous Support
- 3. Describe the Recommendation:**

Packaging Requirement

The Consumer Safety / Social Issues Work Group recommends that the Colorado legislature pass appropriate legislation: (1) indicating that all types of marijuana sold from regulated retail facilities should be regulated (including packaging and labeling) in a manner similar to the Poison Prevention Packaging Act of 1970 (the “**PPPA**”), 15 U.S.C. §§ 1471-1476, and the corresponding regulations promulgated by the Consumer Product Safety Commission, and (2) granting regulatory authority to the Colorado Department of Revenue (with appropriate assistance from the Colorado Department of Public Health and Environment) to promulgate appropriate regulations of packaging of both medical and non-medical marijuana infused products (collectively “**Marijuana Infused Products**”) AND any other medical marijuana and non-medical marijuana items on any licensed premises (“**Other Marijuana Consumer Items**”).

It is our further recommendation that the rules promulgated by the Department of Revenue related to packaging should require that both Marijuana Infused Products and Other Marijuana Consumer Items leave a licensed Medical Marijuana Center (“**MMC**”) or Retail Marijuana Center (“**RMC**”) in packaging that meets the regulatory standards (the “**Standards**”). This would be accomplished by allowing three separate and distinct processes to achieve compliance where all Marijuana Infused Products and Other Marijuana Consumer Items that leave an MMC or RMC in possession of a consumer are EITHER: (1) packaged by the manufacturer in packaging that meets the Standards, (2) packaged by the operator of the MMC or RMC prior to the point-of-sale in a package or container that meets the Standards, OR (3) placed in a “exit package / container ” that meets the Standards at the point-of-sale prior to exiting the store, with the compliance expectation and burden placed upon the operator of an MMC or RMC.

In addition to meeting the Standards, the operator of the MMC or RMC shall also be required to place all Marijuana Infused Products and Other Marijuana Consumer Items in a sealed, non-transparent or opaque package, container or other receptacle (including, but

not limited to, a brown paper bag that is stapled shut) at the point-of-sale. This requirement shall not apply to Marijuana Infused Products and Other Marijuana Consumer Items that are already packaged by the manufacturer in a sealed, non-transparent, or opaque package, container, or other receptacle that meets the Standards.

Background.

The U.S. Consumer Product Safety Commission (CPSC) administers the Poison Prevention Packaging Act of 1970 (PPPA), 15 U.S.C. §§ 1471-1476. The PPPA requires special (child-resistant and adult-friendly) packaging of a wide range of hazardous household products including most oral prescription drugs.

Over the years that the CPSC regulations have been in effect, there have been remarkable declines in reported deaths, injuries, and sickness due to ingestions by children of covered substances. Representatives from the Rocky Mountain Poison Control Center presented to the work group and indicated that there have been some confirmed reports from hospitals in Colorado that children have been taken to the emergency room and in some cases admitted to the Intensive Care Unit for accidental ingestion of Marijuana Infused Products. The children impacted following accidental ingestion required close supervision and care until the effects subsided, and the work group believes it is good public policy to treat these regulated products in a similar manner to items that present significant health risks to children. In addition, mandating packaging that addresses these concerns assists parents in the prevention of accidental ingestion and sets a reasonable model for prevention of accidental ingestion by young children.

4. To which provision of Amendment 64 does the recommendation apply? If there is no applicable provision within Amendment 64, please justify why this recommendation is necessary.

1(b) “...the people of the state of Colorado further find and declare that marijuana should be regulated in a manner similar to alcohol so that:....

(V) marijuana sold in this state will be labeled and subject to additional regulations to ensure that consumers are informed and protected.”

5(a) “...the department shall adopt regulations necessary for implementation of this section. Such regulations shall not prohibit the operation of MJ establishments, either expressly or through regulations that make their operation unreasonably impracticable. Such regulations include:

(VI) labeling requirements for MJ and MJ products sold or distributed by a MJ establishment”

5. Which guiding principle does this recommendation support (underline all those that apply)?

- a. Promote the health, safety, and well-being of Colorado’s youth.
- b. Be responsive to consumer needs and issues.
- c. Propose efficient and effective regulation that is clear and reasonable, and not unduly burdensome.
- d. Create sufficient and predictable funding mechanisms to support the regulatory and enforcement scheme.
- e. Create a balanced regulatory scheme that is complimentary, not duplicative, and clearly defined between state and local licensing authorities.
- f. Establish tools that are clear and practical, so that the interactions between law enforcement, consumers, and licensees are predictable and understandable.
- g. Ensure that our streets, schools, and communities remain safe.
- h. Develop rules and guidance for certain relationships, such as employers and employees, landlords and tenants, students and professors that are clear and transparent.

6. Please summarize the rationale for the recommendation – why is it important?

Cannabis is administered by methods other than oral consumption, as is largely the case for alcohol, and therefore, more targeted standards are needed than the broad approach applied to alcohol. It should also be noted that alcohol provides an intrinsic noxious deterrent for young children through its taste and “burn” when swallowed. Such may not be the case for certain classes of cannabis consumables, i.e. candy and sweets.

7. What issue or issues does your recommendation resolve? (Please identify the issues)

The packaging standards address inadvertent youth ingestion of cannabis products.

8. Is there a dissenting voice in your working group about this recommendation? If yes, please provide a summary of the minority opinion about this recommendation.

No. This recommendation was unanimous.

9. Which of the following does the recommendation impact (underline those that apply):

- a. Statute (legislation)
- b. Policy
- c. Rules and Regulations
- d. Other: *(please describe)*

10. Who owns implementation of the recommendation (underline those that apply):

- a. Governor
- b. State Legislature
- c. Attorney General
- d. Department of Revenue
- e. Department of Public Safety
- f. Department of Public Health and Environment
- g. Local Government
- h. Other: *(please describe)*

11. Is the recommendation dependent on another decision or action: If yes – specifically what actions or decisions are required before this recommendation can be implemented?

Yes. The regulations must be promulgated following the enactment of the statute.

12. Will the recommendation have a cost to implement? If yes, what is the reason for the cost? If yes, give an estimate of the cost.

Yes. However, the cost will largely be carried by industry participants following the regulatory process.

13. Give an estimate of how long it would take to implement the recommendation.

Minimal.

**Amendment 64 Implementation Task Force
Working Group Recommendation**

CS / SI R2

1. **Working Group Name:** Consumer Safety and Social Issues
2. **Individual Sponsor(s):** Kevin Fisher, Laura Borgelt, Laura Harris, Ron Carleton, Ian Barringer

3. Describe the Recommendation:

CULTIVATION AND HANDLING PRACTICES

To help ensure the safety and consistency of plant products sold to Colorado consumers, the Amendment 64 Task Force recommends that:

(1) An appropriate governmental agency, either the Department of Revenue, the Department of Public Health and Environment, or both, shall be authorized by statute to create a list of substances banned for use in the cultivation or processing of marijuana based upon that in current Rule 14.100(E) for medical marijuana;

(2) Labeling of all products shall include a list of all pesticides, herbicides, fungicides and solvents that were used in its cultivation or processing. It should be noted that the regulation should not address whether the products used are appropriate or legal under applicable agricultural laws or regulations.

4. **To which provision of Amendment 64 does the recommendation apply? If there is no applicable provision within Amendment 64, please justify why this recommendation is necessary.**

SECTION 16(1)(V) MARIJUANA SOLD IN THIS STATE WILL BE LABELED AND SUBJECT TO ADDITIONAL REGULATIONS TO ENSURE THAT CONSUMERS ARE INFORMED AND PROTECTED.

SECTION 16(5)(VI) LABELING REQUIREMENTS FOR MARIJUANA AND MARIJUANA PRODUCTS SOLD OR DISTRIBUTED BY A MARIJUANA ESTABLISHMENT.

SECTION 16(5)(VII) HEALTH AND SAFETY REGULATIONS AND STANDARDS FOR THE MANUFACTURE OF MARIJUANA PRODUCTS AND THE CULTIVATION OF MARIJUANA.

5. Which guiding principle does this recommendation support (underline all those that apply)?

- a. Promote the health, safety, and well-being of Colorado's youth.
- b. Be responsive to consumer needs and issues.
- c. Propose efficient and effective regulation that is clear and reasonable, and not unduly burdensome.
- d. Create sufficient and predictable funding mechanisms to support the regulatory and enforcement scheme.
- e. Create a balanced regulatory scheme that is complimentary, not duplicative, and clearly defined between state and local licensing authorities.
- f. Establish tools that are clear and practical, so that the interactions between law enforcement, consumers, and licensees are predictable and understandable.
- g. Ensure that our streets, schools, and communities remain safe.
- h. Develop rules and guidance for certain relationships, such as employers and employees, landlords and tenants, students and professors that are clear and transparent.

6. Please summarize the rationale for the recommendation – why is it important?

At present, there are no standards of practice in the marijuana industry for cultivation in a safe and economical manner. As a result, concerns have been raised about the possible presence of residual pesticides, fungicides, mold and bacteria in plant products. At the same time, there are also no standards for limits on contaminants in marijuana. Without such standards, open-ended laboratory testing for contaminants would be both expensive and inconclusive, as there is no threshold limit for any contaminant above which a product must be rejected.

To address these concerns, we believe that at this time the most effective and economical manner for helping to ensure plant product safety will be a multipart program including (i) banning certain substances from use in cultivation or processing, (ii) requiring labeling of all pesticides, herbicides, fungicides and solvents used in cultivation or processing, and (iii) the development of voluntary Good Cultivation and Handling Practices for the industry. This recommendation deals with items (i) and (ii), with a subsequent recommendation dealing with (iii).

7. What issue or issues does your recommendation resolve?

This recommendation will help ensure the safety and consistency of marijuana products and ensure that producers are accurately labeling their products.

8. Is there a dissenting voice in your working group about this recommendation? If yes, please provide a summary of the minority opinion about this recommendation.

9. Which of the following does the recommendation impact (underline those that apply):

- a. Statute (legislation)
- b. Policy
- c. Rules and Regulations
- d. Other: *(please describe)*

10. Who owns implementation of the recommendation (underline those that apply):

- a. Governor
- b. State Legislature
- c. Attorney General
- d. Department of Revenue
- e. Department of Public Safety
- f. Department of Public Health and Environment
- g. Local Government
- h. Other:

11. Is the recommendation dependent on another decision or action: If yes – specifically what actions or decisions are required before this recommendation can be implemented?

Yes, following enactment of the legislation, the relevant regulatory agencies will need to engage in rulemaking.

12. Will the recommendation have a cost to implement? If yes, what is the reason for the cost? If yes, give an estimate of the cost.

The cost of regulatory implementation will not be zero, will it will largely be dependent upon the state personnel involved in determining the list of banned substances. Currently, there is a list in medical marijuana regulations that address the reporting and labeling. There are also agricultural rules and practices that can be used.

13. Give an estimate of how long it would take to implement the recommendation.

The time frame for implementation will largely depend upon the drafting process for the list of banned substances. We estimate the drafting process could be completed in six

months or less. Implementation could take place promptly thereafter, and enforcement could begin with the growing cycle after the effective date of the regulations.

**Amendment 64 Implementation Task Force
Working Group Recommendation**

CS / SI R3

1. **Working Group Name:** Consumer Safety and Social Issues
2. **Individual Sponsor(s):** Kevin Fisher, Laura Borgelt, Laura Harris, Ron Carleton, Ian Barringer

3. **Describe the Recommendation:**

PRIVATE GOOD CULTIVATION AND HANDLING PRACTICES ADVISORY GROUP

To help ensure the safety and consistency of plant products sold to Colorado consumers, the Amendment 64 Task Force recommends that:

(1) The industry be urged to establish a private advisory group to develop Good Cultivation and Handling Practices (“GCHP”), and that the Department of Agriculture, the Department of Revenue, and the Department of Public Health and Environment, and any other relevant agency be authorized by statute to work with such group in the development of GCHP; and

(2) Participation by producers in such GCHP shall be voluntary, but labeling may include certification of compliance with GCHP by an independent third party authorized under the provisions of the GHCP.

4. **To which provision of Amendment 64 does the recommendation apply? If there is no applicable provision within Amendment 64, please justify why this recommendation is necessary.**

SECTION 16(1)(V) MARIJUANA SOLD IN THIS STATE WILL BE LABELED AND SUBJECT TO ADDITIONAL REGULATIONS TO ENSURE THAT CONSUMERS ARE INFORMED AND PROTECTED.

SECTION 16(5)(VI) LABELING REQUIREMENTS FOR MARIJUANA AND MARIJUANA PRODUCTS SOLD OR DISTRIBUTED BY A MARIJUANA ESTABLISHMENT.

SECTION 16(5)(VII) HEALTH AND SAFETY REGULATIONS AND STANDARDS FOR THE MANUFACTURE OF MARIJUANA PRODUCTS AND THE CULTIVATION OF MARIJUANA.

5. Which guiding principle does this recommendation support (underline all those that apply)?

- a. Promote the health, safety, and well-being of Colorado's youth.
- b. Be responsive to consumer needs and issues.
- c. Propose efficient and effective regulation that is clear and reasonable, and not unduly burdensome.
- d. Create sufficient and predictable funding mechanisms to support the regulatory and enforcement scheme.
- e. Create a balanced regulatory scheme that is complimentary, not duplicative, and clearly defined between state and local licensing authorities.
- f. Establish tools that are clear and practical, so that the interactions between law enforcement, consumers, and licensees are predictable and understandable.
- g. Ensure that our streets, schools, and communities remain safe.
- h. Develop rules and guidance for certain relationships, such as employers and employees, landlords and tenants, students and professors that are clear and transparent.

6. Please summarize the rationale for the recommendation – why is it important?

At present, there are no standards of practice in the marijuana industry for cultivation in a safe and economical manner. As a result, concerns have been raised about the possible presence of residual pesticides, fungicides, mold and bacteria in plant products. At the same time, there are also no standards for limits on contaminants in marijuana. Without such standards, open-ended laboratory testing for contaminants would be both expensive and inconclusive, as there is no threshold limit for any contaminant above which a product must be rejected.

To address these concerns, we believe that at this time the most effective and economical manner for helping to ensure plant product safety will be the development of voluntary Good Cultivation and Handling Practices for the industry. Representatives of the Department of Agriculture, Department of Revenue, and the Department of Public Health and Environment that are members of the work group discussed and agreed to support this recommendation.

7. What issue or issues does your recommendation resolve?

This recommendation will help ensure the safety and consistency of marijuana products and ensure that producers are accurately labeling their products.

8. Is there a dissenting voice in your working group about this recommendation? If yes, please provide a summary of the minority opinion about this recommendation.

Three members of the subgroup, L. Borgelt, K. Fisher and I. Barringer, were in favor of making good cultivation and handling practices a mandatory program, to be administered by an appropriate governmental agency and enforced through an inspection program. However, it appears that such a mandatory program would encounter significant technical and legal hurdles. All five members of the subgroup supported the final recommendation outlined above.

9. Which of the following does the recommendation impact (underline those that apply):

- a. Statute (legislation)
- b. Policy
- c. Rules and Regulations
- d. Other: *(please describe)*

10. Who owns implementation of the recommendation (underline those that apply):

- a. Governor
- b. State Legislature
- c. Attorney General
- d. Department of Revenue
- e. Department of Public Safety
- f. Department of Public Health and Environment
- g. Local Government
- h. Other: Private Industry

11. Is the recommendation dependent on another decision or action: If yes – specifically what actions or decisions are required before this recommendation can be implemented?

Yes, a private industry movement to develop the program will be necessary with the assistance of relative regulatory bodies, with the level of assistance determined by the legislature.

12. Will the recommendation have a cost to implement? If yes, what is the reason for the cost? If yes, give an estimate of the cost.

The cost will be largely incurred in the private sector but there will be a cost associated with involvement of the relevant regulatory authorities depending on the level of involvement.

13. Give an estimate of how long it would take to implement the recommendation.

The time frame for implementation will largely depend upon the private sector movement and funding of the regulatory agencies.

Amendment 64 Implementation Task Force

Working Group Recommendation

CS / SI R4

1. **Working Group Name:** Consumer Safety and Social Issues
2. **Individual Sponsor(s):** Ian Barringer, Laura Borgelt, Kevin Fisher, Laura Harris
3. **Describe the Recommendation:**

The Consumer Safety / Social Issues Work Group recommends that the Colorado legislature pass appropriate legislation granting regulatory authority to the Colorado Department of Revenue (with appropriate assistance from the Colorado Department of Public Health and Environment) to promulgate rules relating to edible forms of marijuana products. Those rules should initially establish that a “serving” of marijuana in edible form to be no more than 10 mg of active THC and labels shall provide the number of servings in any product. There should be no limitation on the maximum number of servings in any single product, as the concerns related to the maximum amount are addressed by the packaging recommendation.

4. **To which provision of Amendment 64 does the recommendation apply? If there is no applicable provision within Amendment 64, please justify why this recommendation is necessary.**

Purpose and findings.

(V) MARIJUANA SOLD IN THIS STATE WILL BE LABELED AND SUBJECT TO ADDITIONAL REGULATIONS TO ENSURE THAT CONSUMERS ARE INFORMED AND PROTECTED.

5. **Which guiding principle does this recommendation support (underline all those that apply)?**
 - a. Promote the health, safety, and well-being of Colorado’s youth.
 - b. Be responsive to consumer needs and issues.
 - c. Propose efficient and effective regulation that is clear and reasonable, and not unduly burdensome.
 - d. Create sufficient and predictable funding mechanisms to support the regulatory and enforcement scheme.
 - e. Create a balanced regulatory scheme that is complimentary, not duplicative, and clearly defined between state and local licensing authorities.

- f. Establish tools that are clear and practical, so that the interactions between law enforcement, consumers, and licensees are predictable and understandable.
- g. Ensure that our streets, schools, and communities remain safe.
- h. Develop rules and guidance for certain relationships, such as employers and employees, landlords and tenants, students and professors that are clear and transparent.

6. Please summarize the rationale for the recommendation – why is it important?

The rationale is to educate the consumer, limit accidental over-ingestion by inexperienced consumers, and limit the total potential for over-ingestion in any one packaged product.

7. What issue or issues does your recommendation resolve?

Inexperienced users accidentally over-ingesting edible forms of marijuana.

8. Is there a dissenting voice in your working group about this recommendation? If yes, please provide a summary of the minority opinion about this recommendation.

This dissenting opinion supports a total dosage limit of 200 mg, or about 20 servings, of active THC per edible. The dissenting opinion believes that a dose limit will reduce the number of adverse events related to marijuana exposure. It is also important to note that a dose limit will not affect the ability of medical marijuana patients to continue to access high dose edibles.

The rationale for a total dose limit is as follows:

- a) According to the Denver Epidemiology Work Group, since 2009 there have been 17 admissions to The Children's Hospital Colorado for accidental ingestion of edibles. If there is a dose limit per edible, children who accidentally eat a portion of an edible will be exposed to less THC than if there is no dose limit and, therefore, will be less likely to have serious medical consequences requiring hospitalization.
- b) Because of the delayed effect of edibles, adults may also have serious consequences from THC exposure. For example, according to the Drug Abuse Warning Network, there were 2,031 Denver County emergency department visits related to marijuana use in 2010. With a dosage limit per edible, adults will also be less likely to experience serious adverse medical events after ingesting marijuana.
- c) Edibles cannot be guaranteed to have a uniform distribution of THC. Therefore, consumers wishing to limit their THC exposure may eat only a portion of a high dose edible but may unknowingly ingest the portion of the edible with a high concentration of THC. This could result in a bad experience with potentially serious consequences.

d) High dose edibles can be divided and unlawfully diverted more easily than dose-restricted edibles. Therefore, limiting the dose of edibles may reduce unlawful diversion of marijuana.

9. Which of the following does the recommendation impact (underline those that apply):

- a. Statute (legislation)
- b. Policy
- c. Rules and Regulations
- d. Other: *(please describe)*

10. Who owns implementation of the recommendation (underline those that apply):

- a. Governor
- b. State Legislature
- c. Attorney General
- d. Department of Revenue
- e. Department of Public Safety
- f. Department of Public Health and Environment
- g. Local Government
- h. Other: *(please describe)*

11. Is the recommendation dependent on another decision or action: If yes – specifically what actions or decisions are required before this recommendation can be implemented?

Labeling of products would have to allow for this information to be included.

12. Will the recommendation have a cost to implement? If yes, what is the reason for the cost? If yes, give an estimate of the cost.

The cost of implementation for this recommendation will depend upon who will regulate the process for labeling.

13. Give an estimate of how long it would take to implement the recommendation.

Implementation of this recommendation could occur immediately.

**Amendment 64 Implementation Task Force
Working Group Recommendation**

CS / SI R5

1. **Working Group Name:** Consumer Safety and Social Issues
2. **Individual Sponsor(s):** Ian Barringer, Laura Borgelt, Kevin Fisher
3. **Describe the Recommendation:**

POTENCY LABELING

Whereby potency refers to the THC content of any given marijuana plant or strain, we recommend that no potency limit be placed on marijuana plants or strains.

We do recommend that all marijuana products be consistently labeled to indicate either:

- 1) Total THC content as % by weight

OR

- 2) Total mg dose for activated THC or TOTAL THC

4. **To which provision of Amendment 64 does the recommendation apply? If there is no applicable provision within Amendment 64, please justify why this recommendation is necessary.**

(1) Purpose and findings.

(V) MARIJUANA SOLD IN THIS STATE WILL BE LABELED AND SUBJECT TO ADDITIONAL REGULATIONS TO ENSURE THAT CONSUMERS ARE INFORMED AND PROTECTED.

(5) Regulation of marijuana.

(VI) LABELING REQUIREMENTS FOR MARIJUANA AND MARIJUANA PRODUCTS SOLD OR DISTRIBUTED BY A MARIJUANA ESTABLISHMENT.

5. **Which guiding principle does this recommendation support (underline all those that apply)?**
 - a. Promote the health, safety, and well-being of Colorado's youth.
 - b. Be responsive to consumer needs and issues.
 - c. Propose efficient and effective regulation that is clear and reasonable, and not unduly burdensome.

- d. Create sufficient and predictable funding mechanisms to support the regulatory and enforcement scheme.
- e. Create a balanced regulatory scheme that is complimentary, not duplicative, and clearly defined between state and local licensing authorities.
- f. Establish tools that are clear and practical, so that the interactions between law enforcement, consumers, and licensees are predictable and understandable.
- g. Ensure that our streets, schools, and communities remain safe.
- h. Develop rules and guidance for certain relationships, such as employers and employees, landlords and tenants, students and professors that are clear and transparent.

6. Please summarize the rationale for the recommendation – why is it important?

Research indicates that the potency of marijuana has increased over time.^{1,2} Placing no potency limitations on marijuana plants or marijuana strains will encourage good growing practices, which will naturally result in stronger flowers. Given the biologic nature of this product, some variation will inevitably exist from harvest to harvest, plant to plant, and bud to bud. Consumers need to be informed of the accurate content for products they are consuming. A standard across the industry will allow for accurate and consistent dosing to reduce potential side effects while providing expected effects.

7. What issue or issues does your recommendation resolve?

This recommendation will prevent centers from selling marijuana with false claims of dosing (inaccurate amounts of THC or other cannabinoids).

8. Is there a dissenting voice in your working group about this recommendation? If yes, please provide a summary of the minority opinion about this recommendation.

9. Which of the following does the recommendation impact (underline those that apply):

- a. Statute (legislation)
- b. Policy
- c. Rules and Regulations
- d. Other: *(please describe)*

10. Who owns implementation of the recommendation (underline those that apply):

- a. Governor
- b. State Legislature
- c. Attorney General

- d. Department of Revenue
- e. Department of Public Safety
- f. Department of Public Health and Environment
- g. Local Government
- h. Other: *(please describe)*

11. Is the recommendation dependent on another decision or action: If yes – specifically what actions or decisions are required before this recommendation can be implemented?

Labeling of products would have to allow for this information to be included.

12. Will the recommendation have a cost to implement? If yes, what is the reason for the cost? If yes, give an estimate of the cost.

The cost of implementation for this recommendation will depend upon who will regulate the testing facilities and how they will be licensed. The marijuana industry would pay for testing to be performed and perhaps a portion of every test could be contributed to the regulating body.

13. Give an estimate of how long it would take to implement the recommendation.

Implementation of this recommendation could occur immediately.

REFERENCES

1. Cascini F, Aiello C, DiTanna G. Increasing delta-9-tetrahydrocannabinol (Δ -9-THC) content in herbal cannabis over time: systematic review and meta-analysis. *Current Drug Abuse Reviews* 2012;5:32-40
2. Seigny EL. Is today's marijuana more potent simply because it's fresher? *Drug Test. Analysis* 2013;5:62-67

Amendment 64 Implementation Task Force Working Group Recommendation Template

Recommendation #1: Application Fees

- 1. Working Group Name:** **Local Authority and Control**
- 2. Individual Sponsor(s):** **Bryan Treu, Eagle County Attorney**
- 3. Describe the Recommendation:** Adopt legislation that directs the State to confer with local jurisdictions when considering whether to raise the \$5000 cap on application fees to reflect the actual costs of reviewing applications for local approval.
- 4. To which provision of Amendment 64 does the recommendation apply? If there is no applicable provision within Amendment 64, please justify why this recommendation is necessary.** Section 5 (a), (f) and g (II). Regulation by Localities.
- 5. Which guiding principle does this recommendation support (underline all those that apply)?**
 - a. Promote the health, safety, and well-being of Colorado's youth.
 - b. Be responsive to consumer needs and issues.
 - c. Propose efficient and effective regulation that is clear and reasonable, and not unduly burdensome.
 - d. **Create sufficient and predictable funding mechanisms to support the regulatory and enforcement scheme.**
 - e. Create a balanced regulatory scheme that is complimentary, not duplicative, and clearly defined between state and local licensing authorities.
 - f. Establish tools that are clear and practical, so that the interactions between law enforcement, consumers, and licensees are predictable and understandable.
 - g. Ensure that our streets, schools, and communities remain safe.
 - h. Develop rules and guidance for certain relationships, such as employers and employees, landlords and tenants, students and professors that are clear and transparent.
 - i. **Take action which is faithful to the text of Article 18, Section 16 of the Colorado Constitution.**
- 6. Please summarize the rationale for the recommendation – why is it important?** Section 5(g)(II) requires the State to forward half of the license application fee to the local jurisdiction. Per Section 5(a)(II), the initial license application fee is capped at \$5000 for new businesses and \$500 for existing medical marijuana businesses. The State may raise the application fees if the Department determines a greater fee is necessary to carry out its responsibilities. Clarification is needed to determine if the State may also raise the application fee on behalf of a local jurisdiction who determines a greater amount is necessary. Clarification is also needed to determine if the

half fee transferred to a local jurisdiction is based on the \$5000 cap or would it include any greater amounts that may be determined necessary by the Department.

7. **What issue or issues does your recommendation resolve?** (Please identify the issues) Consistent and efficient regulations on a statewide and local level. Provide sufficient funding mechanisms for implementation.
8. **Is there a dissenting voice in your working group about this recommendation? If yes, please provide a summary of the minority opinion about this recommendation.** No.
9. **Which of the following does the recommendation impact (underline those that apply):**
 - a. Statute (legislation)
 - b. Policy
 - c. Rules and Regulations
 - d. Other: *(please describe)*
10. **Who owns implementation of the recommendation (underline those that apply):**
 - a. Governor
 - b. State Legislature
 - c. Attorney General
 - d. Department of Revenue
 - e. Department of Public Safety
 - f. Department of Public Health and Environment
 - g. Local Government
 - h. Other: *(please describe)*
11. **Is the recommendation dependent on another decision or action: If yes – specifically what actions or decisions are required before this recommendation can be implemented?**
No.
12. **Will the recommendation have a cost to implement? If yes, what is the reason for the cost? If yes, give an estimate of the cost.** Unknown.
13. **Give an estimate of how long it would take to implement the recommendation.** Time for implementation will be through the legislative drafting period.

**Amendment 64 Implementation Task Force
Working Group Recommendation Template**

Recommendation #2: Operating Fees

1. **Working Group Name:** **Local Authority and Control**
2. **Individual Sponsor(s):** **Bryan Treu, Eagle County Attorney**
3. **Describe the Recommendation:** Adopt legislation that defines “operating fees” (as set forth in Section 5(f)) as “fees that may be charged by a local government for costs including but not limited to inspection, administration and enforcement of businesses authorized pursuant to this section.”
4. **To which provision of Amendment 64 does the recommendation apply? If there is no applicable provision within Amendment 64, please justify why this recommendation is necessary.** Section 5 (f). Regulation by Localities.
5. **Which guiding principle does this recommendation support (underline all those that apply)?**
 - a. Promote the health, safety, and well-being of Colorado’s youth.
 - b. Be responsive to consumer needs and issues.
 - c. Propose efficient and effective regulation that is clear and reasonable, and not unduly burdensome.
 - d. **Create sufficient and predictable funding mechanisms to support the regulatory and enforcement scheme.**
 - e. Create a balanced regulatory scheme that is complimentary, not duplicative, and clearly defined between state and local licensing authorities.
 - f. Establish tools that are clear and practical, so that the interactions between law enforcement, consumers, and licensees are predictable and understandable.
 - g. Ensure that our streets, schools, and communities remain safe.
 - h. Develop rules and guidance for certain relationships, such as employers and employees, landlords and tenants, students and professors that are clear and transparent.
 - i. **Take action which is faithful to the text of Article 18, Section 16 of the Colorado Constitution.**
6. **Please summarize the rationale for the recommendation – why is it important?**

Clarification is needed on what is meant the “operating fees” which local jurisdictions are authorized to charge under Section 5(f). Licensing and application fees are limited to those circumstances where the State has failed to timely adopt regulations or issue licenses. There is no such limitation on operating fees and no definition of the same.

7. **What issue or issues does your recommendation resolve?** (Please identify the issues) Consistent and efficient regulations on a statewide and local level. Provide sufficient funding mechanisms for implementation. Tying actual costs of administering this program to fees.
8. **Is there a dissenting voice in your working group about this recommendation? If yes, please provide a summary of the minority opinion about this recommendation.** No.
9. **Which of the following does the recommendation impact (underline those that apply):**
- a. Statute (legislation)
 - b. Policy
 - c. Rules and Regulations
 - d. Other: *(please describe)*
10. **Who owns implementation of the recommendation (underline those that apply):**
- a. Governor
 - b. State Legislature
 - c. Attorney General
 - d. Department of Revenue
 - e. Department of Public Safety
 - f. Department of Public Health and Environment
 - g. Local Government
 - h. Other: *(please describe)*
11. **Is the recommendation dependent on another decision or action: If yes – specifically what actions or decisions are required before this recommendation can be implemented?**
No.
12. **Will the recommendation have a cost to implement? If yes, what is the reason for the cost? If yes, give an estimate of the cost.** Unknown.
13. **Give an estimate of how long it would take to implement the recommendation.** Time for implementation will be through the legislative drafting period.

**Amendment 64 Implementation Task Force
Working Group Recommendation Template**

Recommendation #3: Clarification On What Constitutes an Offense

1. **Working Group Name:** **Local Authority**
2. **Individual Sponsor(s):** **Bryan Treu, Eagle County Attorney**
3. **Describe the Recommendation:** Adopt legislation that clarifies the definition of “offense” under Amendment 64. It shall not be an offense under any locality for certain defined actions (possess, grow, process, or transport no more than six marijuana plants). Define “offense” as a criminal violation, rather than limiting the power of local jurisdictions to regulate through injunctive relief and attendant civil fines.
4. **To which provision of Amendment 64 does the recommendation apply? If there is no applicable provision within Amendment 64, please justify why this recommendation is necessary.** Section 5 (a) and (f). Regulation by Localities.
5. **Which guiding principle does this recommendation support (underline all those that apply)?**
 - a. Promote the health, safety, and well-being of Colorado’s youth.
 - b. Be responsive to consumer needs and issues.
 - c. **Propose efficient and effective regulation that is clear and reasonable, and not unduly burdensome.**
 - d. Create sufficient and predictable funding mechanisms to support the regulatory and enforcement scheme.
 - e. **Create a balanced regulatory scheme that is complimentary, not duplicative, and clearly defined between state and local licensing authorities.**
 - f. **Establish tools that are clear and practical, so that the interactions between law enforcement, consumers, and licensees are predictable and understandable.**
 - g. Ensure that our streets, schools, and communities remain safe.
 - h. Develop rules and guidance for certain relationships, such as employers and employees, landlords and tenants, students and professors that are clear and transparent.
 - i. Take action which is faithful to the text of Article 18, Section 16 of the Colorado Constitution.
6. **Please summarize the rationale for the recommendation – why is it important?** Local jurisdictions can regulate commercial operations through licensing, police and zoning powers. Amendment 64 precludes an “offense” charge for such individual conduct. Legislation needs to clarify the definition of offense to determine that “offense” is limited to criminal charges and not other enforcement mechanisms.

Local jurisdictions may bring two types of actions to stop a zoning or code violation involving individual use of marijuana (such as cultivating or processing in a residentially zoned neighborhood). One is a criminal charge which is arguably now preempted by Amendment 64. The other is a civil action for an injunction to cease the violating conduct. Failure to stop can lead to daily civil fines. Defining offense to include civil remedies would leave local jurisdictions with no practical way to enforce their regulations.

7. **What issue or issues does your recommendation resolve?** (Please identify the issues)
Consistent and efficient regulations on a state wide and local level.
8. **Is there a dissenting voice in your working group about this recommendation? If yes, please provide a summary of the minority opinion about this recommendation.** No.
9. **Which of the following does the recommendation impact (underline those that apply):**
 - a. Statute (legislation)
 - b. Policy
 - c. Rules and Regulations
 - d. Other: *(please describe)*
10. **Who owns implementation of the recommendation (underline those that apply):**
 - a. Governor
 - b. State Legislature
 - c. Attorney General
 - d. Department of Revenue
 - e. Department of Public Safety
 - f. Department of Public Health and Environment
 - g. Local Government
 - h. Other: *(please describe)*
11. **Is the recommendation dependent on another decision or action: If yes – specifically what actions or decisions are required before this recommendation can be implemented?**
No.
12. **Will the recommendation have a cost to implement? If yes, what is the reason for the cost? If yes, give an estimate of the cost.** No.
13. **Give an estimate of how long it would take to implement the recommendation.** Time for implementation will be through the legislative drafting/adoption period.

**Amendment 64 Implementation Task Force
Working Group Recommendation Template**

Recommendation #4: Clarify Regulatory Roles

- 1. Working Group Name:** **Local Authority and Control**

- 2. Individual Sponsor(s):** **David Baumgarten, Gunnison County Attorney**
 Harris Kenny, Reason Foundation Policy Analyst
 Bryan Treu, Eagle County Attorney
 Tom Downey, Director, Dept. of Excise and Licenses, City
 and County of Denver
 Mike Rozycki, Planning Director, San Miguel County
 Jason Warf, Colorado Springs Medical Cannabis Council

- 3. Describe the Recommendation:** Clarify the regulatory roles of the State and Local Jurisdictions. Adopt a dual licensing system similar to 12-43.3-310 where the State would be given exclusive authority to regulate expressly identified matters of "statewide concern" that must be uniform to ensure consistency and predictability statewide. Matters of statewide concern defined in Art. XVIII, Section 16 (5) (a) (I)-(IX) would be most effectively communicated and enforced through a single, unambiguous "Colorado Marijuana Code" that would provide the base level or "floor" of licensing.

Matters of statewide concern that are reserved to the state without possibility of acceptance of delegation by local governments, with compliance with these statewide concerns as an additional requirement of maintenance of any local license and with enforcement of these statewide requirements also delegated to local enforcement, include:
 - 1) Legal Age
 - 2) Driving requirements and restrictions
 - 3) Quality control and testing, packaging, labeling
 - 4) Taxation on the state level
 - 5) Possession limits
 - 6) Use on property of the state and political subdivisions of the state
 - 7) Security requirements (provided that it includes use of locking doors, cameras, alarm systems, recording back up for 30 days, storage of finished product and cash in an affixed safe overnight and locking and refrigerators overnight)
 - 8) Vertical/non-vertical integration and business association
 - 9) Health department inspections of MIP production facilities
 - 10) State licensing and regulatory requirements
 - 11) Possession on public rights of way

Matters of both local and statewide concern, with compliance with these issues as an additional requirement of maintenance of any local license, with enforcement of these statewide

requirements also delegated to local enforcement personnel, and with delegated ability for local governments to adopt more restrictive standards than the state so long as such standards do not violate Amendment 64, include:

- 1) Advertising
- 2) Background checks
- 3) Hours of operation
- 4) Open and public use
- 5) Minimum distance requirements

Anything not otherwise delineated here is considered a matter of purely local concern and local governments are explicitly authorized to regulate these matters.

4. **To which provision of Amendment 64 does the recommendation apply? If there is no applicable provision within Amendment 64, please justify why this recommendation is necessary.** Section 5 (f). Regulation by Localities.
5. **Which guiding principle does this recommendation support (underline all those that apply)?**
 - a. Promote the health, safety, and well-being of Colorado's youth.
 - b. Be responsive to consumer needs and issues.
 - c. Propose efficient and effective regulation that is clear and reasonable, and not unduly burdensome.
 - d. Create sufficient and predictable funding mechanisms to support the regulatory and enforcement scheme.
 - e. Create a balanced regulatory scheme that is complimentary, not duplicative, and clearly defined between state and local licensing authorities.
6. **Please summarize the rationale for the recommendation – why is it important?** Amendment 64 indicates that certain matters are of “statewide concern.” However, other provisions provide local jurisdictions with the ability to regulate time, place, manner, and number of establishments. Clarification is needed as to the relationship of state and local regulatory authorities. The recommendation is for a dual licensing system that includes a statewide base licensing system that would provide uniformity on such matters as: qualifications for those holding a license including but not limited to satisfactory criminal background checks, minimum age of license holders and employees, whether there are outstanding tax delinquency, etc.; default distance requirements from schools, rehabilitation facilities, etc.*; driving and other use restrictions; taxation; labeling, health and safety standards for manufacturing, possession limits; use restrictions, if any, on state-owned properties; security requirements for such businesses; and other regulations needing a uniform application. This approach would set a statewide "floor" for licensing that would allow local jurisdictions to defer to if they so choose.

Similar to 12-43.3-310(1), local jurisdictions would then have the ability to enact further (not "unreasonably impracticable" in Art. XVIII, Section 16 (2) (o)) regulations and restrictions that would provide compatibility with local community requirements. Localities would regulate land use, zoning, place, time and manner to achieve local harmony and provide flexibility to those

businesses operating within their boundaries. Local jurisdictions would regulate such matters as location, visibility, sign codes, hours of operation, number and type of establishments (concentration), neighborhood compatibility, odor, noise, accessibility, restrictions on local government-owned properties, special events, etc.

The recommendation is for a dual-licensing system that provides an opportunity for, but does not require, local jurisdictions to regulate and address those items not specifically enumerated in the statewide "floor" regulations. Those items not expressly reserved to the statewide floor would be left to local jurisdictions to regulate. Regulation at the local level beyond an articulated set of statewide subject matters will provide better acceptance of this new industry in local communities, will allow local governments to honor local constituencies, will allow experimentation with different models above that "floor," will allow replication of successes and cauterization of mistakes more rapidly, and will foster relationships and participation among the State, local communities, and those in the regulated business community.

*As with 12-43.3-308(d)(1) we would recommend that local jurisdictions retain the ability to vary the distance restrictions that may be imposed on a statewide level to provide greater flexibility and local control.

7. **What issue or issues does your recommendation resolve? (Please identify the issues)**
Consistent and efficient regulations on a state wide and local level.
8. **Is there a dissenting voice in your working group about this recommendation? If yes, please provide a summary of the minority opinion about this recommendation.** No dissent.
9. **Which of the following does the recommendation impact (underline those that apply):**
 - a. Statute (legislation)
 - b. Policy
 - c. Rules and Regulations
 - d. Other: *(please describe)*
10. **Who owns implementation of the recommendation (underline those that apply):**
 - a. Governor
 - b. State Legislature
 - c. Attorney General
 - d. Department of Revenue
 - e. Department of Public Safety
 - f. Department of Public Health and Environment
 - g. Local Government
 - h. Other: *(please describe)*
11. **Is the recommendation dependent on another decision or action: If yes – specifically what actions or decisions are required before this recommendation can be implemented? Yes,**
the decision to allow a dual licensing program.
12. **Will the recommendation have a cost to implement? If yes, what is the reason for the cost? If yes, give an estimate of the cost.** No.

13. Give an estimate of how long it would take to implement the recommendation. Time for implementation will be through the legislative drafting period.